



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 12/04/2005 (Per: JTK)



Appendix A ... Part 07 of 16

☞ The 2005 drafting file for LRB 05-2978/11

has been copied/added to the 2005 drafting file for

LRB 05-3956 (SB 426)

☞ The attached 2005 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2005 drafting file. The drafting file was then returned, intact, to its folder and filed.



(DN 5729) ↓
State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2978/3 4

JTK:wlj:jt

Wanted Ne 10/4 - Am

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SWS

2005 BILL

(originate)

1 AN ACT ~~to repeal~~ 108.04 (1) (e) and 108.04 (7) (f); **to renumber** 108.22 (1) (ad);
2 **to renumber and amend** 108.105 and 108.22 (8) (b); **to amend** 108.02 (12) (a),
3 108.02 (12) (dm), 108.02 (12) (dn), 108.02 (15) (j) 5. and 6., 108.02 (21) (a)
4 (intro.), 108.02 (21e) (intro.), 108.04 (1) (b) 1., 108.04 (1) (b) 3. (intro.), 108.04
5 (1) (c), 108.04 (13) (c), 108.04 (13) (e), 108.04 (16) (b), 108.04 (16) (c) 2., 108.05
6 (3) (a), 108.05 (10) (b), 108.068 (2), 108.09 (2) (bm), 108.09 (4s), 108.151 (4) (b),
7 108.16 (8) (e) 1., 108.16 (8) (h), 108.17 (2g), 108.18 (1) (a), 108.18 (2) (d), 108.205
8 (2), 108.22 (1) (b), 108.22 (1) (c), 108.22 (1m), 108.22 (2), 108.225 (1) (a), 108.225
9 (20) and 108.24 (2); and **to create** 108.02 (15) (j) 7., 108.04 (13) (g), 108.09 (4n),
10 108.105 (2), 108.151 (7), 108.16 (6w) and (6x), 108.16 (8) (em), 108.16 (8) (im),
11 108.16 (8) (m) to (o), 108.17 (2b), 108.205 (1m), 108.22 (1) (ad) 2. and 108.22 (8)

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1 (b) 2. of the statutes; **relating to:** various changes in the unemployment
2 insurance law and providing penalties *and making an appropriation*

Analysis by the Legislative Reference Bureau

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

BENEFIT CHANGES

Determination of wages for purposes of partial unemployment benefits

Under current law, with certain exceptions, if a claimant earns wages in a given week in employment covered by the unemployment insurance law, the first \$30 of the wages are disregarded and the claimant's weekly benefit payment is reduced by 67 percent of the remaining amount of wages earned. However, any amount that a claimant earns for services performed as a volunteer fire fighter, volunteer emergency medical technician, or volunteer first responder in any week does not reduce the claimant's benefit payment for that week. This bill discontinues the exclusion of amounts earned for volunteer fire fighter, volunteer emergency medical technician, and volunteer first responder services from partial unemployment benefit calculation. The bill also provides that wages earned in work not covered by the unemployment insurance law are included with other wages in calculating benefit reductions for partial unemployment benefits.

Benefit reductions due to certain suspensions, terminations, and leaves

Currently, if an employee is suspended from his or her employment *or if* an employee is terminated by his or her employer because the employee is unable to perform or unavailable for *suitable* work otherwise available with the employee's employer *or if* an employee is granted family or medical leave, the employee is ineligible to receive benefits for the week in which the suspension or termination occurs or the leave begins. This bill provides instead that an employee who is suspended or terminated due to inability to perform work or unavailability for work or an employee who is granted family or medical leave is only ineligible to receive benefits for the portion of the week in which the employee was unable to perform work or unavailable for *work due to a suspension or termination*.

Self-employment disqualification

Currently, an individual who is self-employed is not eligible for benefits for any week in which the individual has worked at the self-employment unless the individual establishes to the satisfaction of the Department of Workforce Development (DWD) that he or she has made an active and bona fide search for employment. DWD must prescribe work-search requirements by rule, and may waive those requirements under certain conditions. This bill deletes the self-employment disqualification, thereby making individuals who work at their self-employment subject to work-search requirements and waivers on the same basis as other claimants.

and the employee is unable to perform work or unavailable for suitable work after the suspension or termination

BILL***Voluntary termination of work***

Currently, if an employee voluntarily terminates his or her work with an employer, the employee is generally ineligible to receive benefits until four weeks have elapsed since the end of the week in which the termination occurs and the employee earns wages after the week in which the termination occurs equal to at least four times the employee's weekly benefit rate in employment covered by the unemployment insurance law of any state or the federal government. However, an employee may terminate his or her work and receive benefits without requalifying under this provision if the employee terminates his or her work with good cause attributable to his or her employer. In addition, an employee may voluntarily terminate his or her work and receive benefits without requalifying under this provision if the employee is transferred by his or her employer to work paying less than two-thirds of his or her immediately preceding wage rate with that employer, except that the employee is ineligible to receive benefits for the week of termination and the four next following weeks. This bill deletes the latter exception. Under the bill, if an employee's wages are substantially reduced by his or her employer, the employee may still be able to voluntarily terminate his or her employment and claim benefits without requalifying or waiting, if it is determined that the wage reduction constitutes good cause attributable to the employee's employer.

Employee status

Currently, 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 covered by the unemployment insurance law, whether or not the employer directly pays the individual. However, an individual is not an "employee" if the individual owns a business that operates as a sole proprietorship or if the individual is a partner in a business that operates as a partnership. This bill provides that these exclusions apply only with respect to services the individual performs for the sole proprietorship or partnership.

TAX CHANGES***Uncollectible reimbursable benefits***

Currently, an employer that is a nonprofit organization may, in lieu of paying regular contributions (taxes) to the unemployment reserve fund, elect to reimburse the fund for the cost of benefits charged to its account. If a nonprofit organization that has elected reimbursement financing fails to reimburse the fund for the cost of benefits charged to its account and DWD is unable to collect the amount due, together with any interest and penalties, the fund must absorb these costs. Employers that elect reimbursement financing do not contribute to the payment of these costs. This bill provides that if, as of June 30 of any year, there is a total of at least \$5,000 due from nonprofit organizations for reimbursements of benefits paid on their behalf that DWD has determined to be uncollectible, DWD must assess all employers that are nonprofit organizations, except Indian tribes, for these costs, but shall not assess more than a total of \$200,000 in any single year. Under the bill, assessments are applied by DWD to each employer's gross payroll at a rate

*and that have elected
reimbursement
financing*

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determined by DWD to be sufficient to reimburse the fund for uncollectible reimbursements paid on behalf of employers that are nonprofit organizations. The bill provides that no assessments are payable based on uncollectible reimbursements that ~~became payable January 1, 2004.~~ *DWD determined to be uncollectible prior to January 1, 2004*

Treatment of professional employer organizations

Currently, an employer is generally liable for contributions (taxes) or benefit reimbursements based on an individual's employment if the individual is subject to the employer's direction or control over the performance of the individual's services. However, if an individual performs services for a client of a professional employer organization under a contract, the organization is liable for contributions or benefit reimbursements based on those services under certain specified conditions. Currently, a "professional employer organization" is an organization that contracts to provide the nontemporary, ongoing workforce of a client. Under this bill, an organization may qualify as a "professional employer organization" only if it contracts to provide the nontemporary, ongoing workforce of more than one client, and the majority of the organization's clients are not under the same ownership, management, or control as the organization, other than through the terms of the contract.

OTHER CHANGES***Electronic reporting***

Currently, employers must file separate quarterly reports of contributions and wages with DWD. Employer agents that file contribution reports on behalf of 25 or more employers must file the reports using an electronic medium approved by DWD. Employers that employ 100 or more employees must also file quarterly wage reports using an electronic medium approved by DWD. This bill requires each employer of 50 or more employees that does not use an employer agent to file its contribution reports to file those contribution reports electronically using the Internet on a form prescribed by DWD. The bill requires each employer agent that prepares contribution reports on behalf of less than 25 employers to file those reports electronically using the Internet on a form prescribed by DWD. The bill requires all employer agents to file all wage reports electronically ~~using the Internet on a form~~ *in the* prescribed by DWD. The bill also requires employers of 50 or more employees to file wage reports using an electronic medium approved by DWD. In addition, the bill makes an employer that is required to file its contribution reports electronically liable for a penalty of \$25 for each report that is not filed electronically in the form prescribed by DWD.

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 (tax) and benefit liability. DWD must treat the transferee as the successor to the transferor if the transferor and transferee are owned or controlled by the same interests. When a transferee is treated as a successor to a transferor, the contribution rates of the transferor and transferee are recomputed

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effective on January 1 of the year following the transfer. This bill requires DWD to treat the transferee as the successor to the transferor if the transferor and transferee are owned, controlled, or managed by the same interests. The bill also requires recomputation of the transferor's and transferee's contribution rates effective on the date of the transfer. The bill permits DWD to nullify a successorship if it finds that a substantial purpose of a business transfer was to obtain a reduced contribution rate for the transferee. In addition, the bill provides for punitive increases in contribution rates for employers, and creates both civil and criminal misdemeanor penalties for other persons, who knowingly make or attempt to make a false statement or representation to DWD in connection with an investigation to determine whether an employer qualifies to be considered a successor to the transferor of a business.

Coverage of certain AmeriCorps employees

Currently, employees performing services for the federal AmeriCorps program are generally covered under the unemployment insurance law. This bill eliminates coverage for those services, except for services performed as a part of a professional corps program in which a public or private nonprofit employer pays the entire salaries of the employees. Under the bill, employers that provide these services are no longer subject to contribution requirements (the requirement to pay taxes) based upon these services, and claimants are no longer eligible to claim benefits based upon the performance of these services.

Failure of employers to provide information

Currently, if benefits are erroneously paid because an employer fails to provide correct and complete information on a report to DWD, any benefits that DWD recovers do not affect charges to the employer's account for the cost of those benefits. The bill provides, in addition, that during the period beginning on January 1, 2006, and ending on June 28, 2008, if benefits are erroneously paid because an employer fails to provide correct and complete information requested by DWD during a fact-finding investigation, but the employer later provides the requested information, then charges to the employer's account for the cost of benefits paid before the end of the week in which a redetermination or a decision of an appeal tribunal (hearing examiner) is issued regarding the matter are not affected by the redetermination or decision unless an appeal tribunal, the labor and industry review commission, or a court finds that the employer had good cause for failing to provide the information.

Suspension of agents

Currently, DWD may suspend the privilege of any agent to appear before DWD at hearings under the unemployment insurance law for a specified period if DWD finds that the agent has engaged in an act of fraud or misrepresentation, has repeatedly failed to comply with rules of DWD, or has engaged in solicitation of a claimant solely for the purpose of appearing at a hearing as the claimant's representative for pay. This bill permits DWD also to suspend the privilege of an agent to act as an employer's representative under the unemployment insurance law for up to one year if the agent fails to provide correct and complete information requested by DWD during at least ten separate fact-finding investigations involving employers that the agent represented within a 12-month period.

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BILL***Issuance of warrants against certain individuals***

Currently, under certain conditions, an individual who holds at least 20 percent of the ownership interest in a corporation or limited liability company may be found to be personally liable for unemployment insurance liabilities of the corporation or company. Currently, if an employer has delinquent unemployment insurance liabilities, DWD may issue a warrant and file it with the clerk of circuit court for any county where real or personal property of the employer is found. The warrant constitutes a lien upon the property and is subject to execution through sale of the property. This bill provides that DWD may issue a warrant for the collection of any unemployment insurance liabilities for which an individual is found to be personally liable.

Treatment of limited liability companies

Currently, DWD treats a limited liability company as a corporation if the company files an election with the federal Internal Revenue Service to be so treated for federal tax purposes and files proof with DWD that the Internal Revenue Service has agreed to so treat the company. The treatment may affect the taxation of the wages paid to principal officers of the company and their eligibility for benefits. For benefit purposes, a change is effective on the same date that the Internal Revenue Service agrees to treat the company as a corporation or the date that proof of such treatment is filed with DWD, whichever is later. Under this bill, a change applies to benefit years (periods during which benefits are potentially payable) in existence on or beginning on or after the date that the federal Internal Revenue Service treats the company as a corporation for federal tax purposes if the benefit year to which the treatment is to be applied has not ended on the date that the company files proof of the federal treatment and that benefit year has not ended on the date that DWD first receives notice of a benefit eligibility issue with respect to benefits that may become payable in the benefit year.

Administrative levy fees

Currently, DWD may proceed against any third party that has in its possession property that is subject to levy for payment of delinquent contributions or penalties administratively assessed by DWD, or for repayment of benefit overpayments. The third party may deduct and retain a fee of \$5 from the amount collected in payment of the fee. This bill entitles a third party to collect and retain a levy fee of \$5 for each levy in which a debt is satisfied by means of a single payment and \$15 for each levy in which a debt is satisfied by means of more than one payment. Under the bill, the fee is payable from the property levied against and is in addition to the amount of the levy.

Enforcement of assessments against imposters

Currently, if any person makes a false statement or representation 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. One of the ways by which DWD may collect such an assessment is to offset the amount of the

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that relates to treatment of that limited liability company

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assessment against any benefits that would otherwise be payable to the person. This process is called recoupment. This bill deletes the authority of DWD to collect these assessments by means of recoupment.

Admission of employment data system reports

Currently, the contents of a verified or certified report by a qualified expert presented by a party or DWD at an administrative hearing in a benefit claim case is prima facie evidence of the matter contained in the report if the report is otherwise competent and relevant, subject to rules as DWD prescribes. If a report is accepted as prima facie evidence of the matter contained in the report, it is not necessary to present testimony of the expert who created the report in order to admit the report into evidence.

occupational information and
This bill provides that if DWD maintains a database system consisting of employment conditions data and an employee of DWD creates a report from the system, the report also constitutes prima facie evidence as to the matters contained in the report in an administrative hearing on a benefit claim if DWD first provides to the parties an explanation of the system, the parties have an opportunity to review and object to the report, and the report sets forth all information used in creating the report and contains information that can be used to identify the departmental employee who created the report.

Charging of certain benefits for claimants enrolled in approved training

Under current law, if a claimant who is enrolled in employment-related training approved by DWD is paid benefits for which the claimant would otherwise be ineligible because the claimant has terminated his or her work or failed to accept suitable work or recall to work and is unable to work or unavailable for work or has failed to meet work search requirements, the costs of the benefits is 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 the claimant's employer or employers. This bill specifically applies this noncharging procedure only with respect to an employer from which the claimant terminated his or her work or refused to accept a recall to work.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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

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

SECTION 1. 108.02 (12) (a) of the statutes is amended to read:

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BILL**SECTION 1**

1 108.02 (12) (a) “Employee” means any individual who is or has been performing
2 services for pay for an employing unit, ~~in an employment~~, whether or not the
3 individual is paid directly by such ~~the~~ employing unit; except as provided in par. (b),
4 (bm), (c), (d), (dm) or (dn).

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

6 108.02 (12) (dm) Paragraph (a) does not apply to an individual who owns a
7 business that operates as a sole proprietorship with respect to services the individual
8 performs for that business.

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

10 108.02 (12) (dn) Paragraph (a) does not apply to a partner in a business that
11 operates as a partnership with respect to services the partner performs for that
12 business.

13 **SECTION 4.** 108.02 (15) (j) 5. and 6. of the statutes are amended to read:

14 108.02 (15) (j) 5. In any quarter in the employ of any organization exempt from
15 federal income tax under section 501 (a) of the internal revenue code, other than an
16 organization described in section 401 (a) or 501 (c) (3) of such code, or under section
17 521 of the internal revenue code, if the remuneration for such service is less than \$50;
18 or

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

25 or

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1 **SECTION 5.** 108.02 (15) (j) 7. of the statutes is created to read:

2 108.02 (15) (j) 7. By an individual who is a participant in the AmeriCorps
3 program, except service performed pursuant to a professional corps program as
4 described in 42 USC 12572 (a) (8).

5 **SECTION 6.** 108.02 (21) (a) (intro.) of the statutes is amended to read:

6 108.02 (21) (a) (intro.) “Payroll” Except as provided in s. 108.151 (7) (a),
7 “payroll” means all wages paid directly or indirectly by an employer within a certain
8 period to individuals with respect to their employment by that employer, and
9 includes all such wages for work which is excluded under sub. (15) (k) if the wages
10 paid for such work:

11 **SECTION 7.** 108.02 (21e) (intro.) of the statutes is amended to read:

12 108.02 (21e) PROFESSIONAL EMPLOYER ORGANIZATION. (intro.) “Professional
13 employer organization” means any person who contracts to provide the
14 nontemporary, ongoing employee workforce of ~~a client~~ more than one client under
15 a written leasing contract, the majority of whose clients are not under the same
16 ownership, management, or control as the person other than through the terms of
17 the contract, and who under contract and in fact:

18 **SECTION 8.** 108.04 (1) (b) 1. of the statutes is amended to read:

19 108.04 (1) (b) 1. While the employee is unable to work, or unavailable for work,
20 if his or her employment with an employer was suspended by the employee or by the
21 employer or was terminated by the employer because the employee was unable to do,
22 or unavailable for, suitable work otherwise available with the employer, except as
23 provided in par. (c);

24 **SECTION 9.** 108.04 (1) (b) 3. (intro.) of the statutes is amended to read:

BILL**SECTION 9**

1 108.04 (1) (b) 3. While the employee is on family or medical leave under the
2 federal family and medical leave act of 1993 (P.L. 103-3) or s. 103.10, and except as
3 provided in par. (c), until whichever of the following occurs first:

4 **SECTION 10.** 108.04 (1) (c) of the statutes is amended to read:

5 108.04 (1) (c) If a leave of absence under par. (b) 2. or a family or medical leave
6 under par. (b) 3. is granted to an employee for a portion of a week, if an employee is
7 absent for only a portion of the available work in a week due to a suspension under
8 par. (b) 1., or if an employee is absent for only a portion of the available work in a week
9 in which a termination under par. (b) 1. occurs, the employee's eligibility for benefits
10 for that partial week shall be reduced by the amount of wages that the employee
11 could have earned in his or her work had the leave not been granted or had the
12 suspension or termination not occurred. For purposes of this paragraph, the
13 department shall treat the amount the employee would have earned as wages in that
14 work for that week as wages earned by the employee and shall apply the method
15 specified in s. 108.05 (3) (a) to compute the benefits payable to the employee. The
16 department shall estimate the wages that an employee would have earned for a
17 partial week if it is not possible to compute the exact amount of wages that the
18 employee would have earned for that partial week.

19 **SECTION 11.** 108.04 (1) (e) of the statutes is repealed.

20 **SECTION 12.** 108.04 (7) (f) of the statutes is repealed.

21 **SECTION 13.** 108.04 (13) (c) of the statutes is amended to read:

22 108.04 (13) (c) If an employer, after notice of a benefit claim, fails to file an
23 objection to the claim under s. 108.09 (1), any benefits allowable under any resulting
24 benefit computation shall, unless the department applies a provision of this chapter
25 to disqualify the claimant, be promptly paid. Except as otherwise provided in this

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1 paragraph, any eligibility question in objection to the claim raised by the employer
2 after benefit payments to the claimant are commenced does not affect benefits paid
3 prior to the end of the week in which a determination is issued as to the eligibility
4 question unless the benefits are erroneously paid without fault on the part of the
5 employer. If, during the period beginning on January 1, 2006, and ending on June
6 28, 2008, an employer fails to provide correct and complete information requested by
7 the department during a fact-finding investigation, but later provides the requested
8 information, charges to the employer's account for benefits paid prior to the end of
9 the week in which a redetermination is issued regarding the matter or, if no
10 redetermination is issued, prior to the end of the week in which an appeal tribunal
11 decision is issued regarding the matter, are not affected by the redetermination or
12 decision, except as provided in par. (g). If benefits are erroneously paid because the
13 employer and the employee are at fault, the department shall charge the employer
14 for the benefits and proceed to create an overpayment under s. 108.22 (8) (a). If
15 benefits are erroneously paid without fault on the part of the employer, regardless
16 of whether the employee is at fault, the department shall charge the benefits as
17 provided in par. (d), unless par. (e) applies, and proceed to create an overpayment
18 under s. 108.22 (8) (a). If benefits are erroneously paid because an employer is at
19 fault and the department recovers the benefits erroneously paid under s. 108.22 (8),
20 the recovery does not affect benefit charges made under this paragraph.

21 **SECTION 14.** 108.04 (13) (e) of the statutes is amended to read:

22 108.04 (13) (e) If the department erroneously pays benefits from one
23 employer's account and a 2nd employer is at fault, the department shall credit the
24 benefits paid to the first employer's account and charge the benefits paid to the 2nd
25 employer's account. Filing of a tardy or corrected report or objection does not affect

BILL**SECTION 14**

1 the 2nd employer's liability for benefits paid prior to the end of the week in which the
2 department makes a recomputation of the benefits allowable or prior to the end of
3 the week in which the department issues a determination concerning any eligibility
4 question raised by the report or by the 2nd employer. If, during the period beginning
5 on January 1, 2006, and ending on June 28, 2008, the 2nd employer fails to provide
6 correct and complete information requested by the department during a fact-finding
7 investigation, but later provides the requested information, the department shall
8 charge to the account of the 2nd employer the cost of benefits paid prior to the end
9 of the week in which a redetermination is issued regarding the matter or, if no
10 redetermination is issued, prior to the end of the week in which an appeal tribunal
11 decision is issued regarding the matter, except as provided in par. (g). If the
12 department recovers the benefits erroneously paid under s. 108.22 (8), the recovery
13 does not affect benefit charges made under this paragraph.

14 **SECTION 15.** 108.04 (13) (g) of the statutes is created to read:

15 108.04 (13) (g) During the period beginning on January 1, 2006, and ending on
16 June 28, 2008, if benefits are erroneously paid because an employer fails to provide
17 correct and complete information requested by the department during a fact-finding
18 investigation, the employer is at fault unless an appeal tribunal, the commission, or
19 a court of competent jurisdiction finds that the employer had good cause for the
20 failure to provide the information.

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

22 108.04 (16) (b) The department shall not apply any benefit disqualification
23 under sub. (1) (b) 1., ~~(2) (a) or (d)~~, (7) (c), or (8) (e) or s. 108.141 (3g) that is not the
24 result of training or basic education under par. (a) while an individual is enrolled in
25 a course of training or education that meets the standards specified in par. (a).

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1 **SECTION 17.** 108.04 (16) (c) 2. of the statutes is amended to read:

2 108.04 (16) (c) 2. The department shall not apply benefit disqualifications
3 under sub. (1) (b) 1., ~~(2) (a) or (d)~~, (7) (c), or (8) (e) or s. 108.141 (3g) that are not the
4 result of the training while the individual is enrolled in the training.

5 **SECTION 18.** 108.05 (3) (a) of the statutes is amended to read:

6 108.05 (3) (a) Except as provided in pars. (b) and (c), if an eligible employee
7 earns wages in a given week, the first \$30 of the wages shall be disregarded and the
8 employee's applicable weekly benefit payment shall be reduced by 67% of the
9 remaining amount, except that no such employee is eligible for benefits if the
10 employee's benefit payment would be less than \$5 for any week. For purposes of this
11 paragraph, "wages" includes any salary reduction amounts earned that are not
12 wages and that are deducted from the salary of a claimant by an employer pursuant
13 to a salary reduction agreement under a cafeteria plan, within the meaning of 26
14 USC 125, and any amount that a claimant would have earned in available work
15 which is treated as wages under s. 108.04 (1) (a), ~~but excludes any amount that a~~
16 ~~claimant earns for services performed as a volunteer fire fighter, volunteer~~
17 ~~emergency medical technician or volunteer first responder.~~ In applying this
18 paragraph, the department shall disregard discrepancies of less than \$2 between
19 wages reported by employees and employers.

20 **SECTION 19.** 108.05 (10) (b) of the statutes is amended to read:

21 108.05 (10) (b) Second, to recover overpayments under s. 108.22 (8) (b) 1.

22 **SECTION 20.** 108.068 (2) of the statutes is amended to read:

23 108.068 (2) The department shall treat a limited liability company that files
24 proof under sub. (1) as a corporation under this chapter beginning on the same date
25 that the federal internal revenue service treats the company as a corporation for

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SECTION 20

1 federal tax purposes, except that for benefit purposes the treatment shall apply on
 2 the same date that the internal revenue service applies the treatment or the date
 3 that proof is filed with the department, whichever is later to benefit years in
 4 existence on or beginning on or after the date that the federal internal revenue
 5 service treats the company as a corporation for federal tax purposes if the benefit
 6 year to which the treatment is to be applied has not ended on the date that the
 7 company files proof under sub. (1) and that benefit year has not ended on the date
 8 that the department first has notice of a benefit eligibility issue with respect to
 9 benefits that may become payable in the benefit year.

that relates to
treatment of that limited liability company
STET - plain period.

SECTION 21. 108.09 (2) (bm) of the statutes is amended to read:

11 108.09 (2) (bm) In determining whether an individual meets the conditions
 12 specified in s. 108.02 (12) (b) 2. a. or b. or (bm) ~~1. or 2.~~ 3. or 4., or (c) 1., the department
 13 shall not consider documents granting operating authority or licenses, or any state
 14 or federal laws or federal regulations granting such authority or licenses.

SECTION 22. 108.09 (4n) of the statutes is created to read:

16 108.09 (4n) EMPLOYMENT DATA SYSTEM REPORTS. If the department maintains
 17 a database system consisting of *occupational information and* employment conditions data, and an employee of the
 18 department, including an individual who serves as an appeal tribunal, creates a
 19 report from the system, the report constitutes prima facie evidence as to the matters
 20 contained in the report in any proceeding under this section if:

21 (a) The department has provided to the parties an explanation of the system
 22 and the reports created from the system prior to admission of the report.

23 (b) The parties have been given the opportunity to review and object to the
 24 report, including the accuracy of any information used in creating the report, prior
 25 to its admission into evidence.

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1 (c) The report sets forth all of the information used in creating the report and
2 contains information that can be used to identify the employee of the department
3 who created the report.

4 **SECTION 23.** 108.09 (4s) of the statutes is amended to read:

5 108.09 (4s) EMPLOYEE STATUS. In determining whether an individual meets the
6 conditions specified in s. 108.02 (12) (b) 2. a. or b. ~~or~~, (bm) ~~1. or 2.~~ 3. or 4., or (c) 1., the
7 appeal tribunal shall not take administrative notice of or admit into evidence
8 documents granting operating authority or licenses, or any state or federal laws or
9 federal regulations granting such authority or licenses.

10 **SECTION 24.** 108.105 of the statutes is renumbered 108.105 (1) and amended
11 to read:

12 108.105 (1) The department may suspend the privilege of any agent to appear
13 before the department at hearings under this chapter for a specified period if the
14 department finds that the agent has engaged in an act of fraud or misrepresentation
15 ~~or~~ has repeatedly failed to comply with departmental rules, or has engaged in the
16 solicitation of a claimant solely for the purpose of appearing at a hearing as the
17 claimant's representative for pay.

18 **(3)** Prior to imposing a suspension under this section, the secretary of workforce
19 development or the secretary's designee shall conduct a hearing concerning the
20 proposed suspension. The hearing shall be conducted under ch. 227 and the decision
21 of the department may be appealed under s. 227.52.

22 **SECTION 25.** 108.105 (2) of the statutes is created to read:

23 108.105 (2) The department may suspend the privilege of an agent to act as an
24 employer's representative under this chapter for up to one year if the agent fails to
25 provide correct and complete information requested by the department during at

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BILL**SECTION 25**

1 least 10 separate fact-finding investigations involving employers represented by the
2 agent within a 12-month period.

3 **SECTION 26.** 108.151 (4) (b) of the statutes is amended to read:

4 108.151 (4) (b) The fund's treasurer shall issue a receipt to the employer for its
5 deposit of assurance. Any assurances shall be retained by the fund's treasurer in
6 escrow, for the fund, until the employer's liability under its election is terminated,
7 at which time they shall be returned to the employer, less any deductions made under
8 this paragraph. The employer may at any time substitute assurances of equal or
9 greater value. The treasurer may, with 10 days' notice to the employer, liquidate the
10 assurances deposited to the extent necessary to satisfy any delinquent
11 reimbursements or assessments due under this section together with any interest
12 and any tardy filing fees due. The treasurer shall hold in escrow any cash remaining
13 from the sale of the assurances, without interest. The fund's treasurer shall require
14 the employer within 30 days following any liquidation of deposited assurances to
15 deposit sufficient additional assurances to make whole the employer's deposit at the
16 prior level. Any income from assurances held in escrow shall inure to and be the
17 property of the employer.

18 **SECTION 27.** 108.151 (7) of the statutes is created to read:

19 108.151 (7) UNCOLLECTIBLE REIMBURSEMENTS. (a) In this subsection, "payroll"
20 has the meaning given in s. 108.02 (21) (a).

21 (b) Except as provided in par. (f), each employer that has elected
22 reimbursement financing under this section and that is subject to this chapter as of
23 the date that a rate of assessment is established under this subsection shall pay an
24 assessment to the fund at a rate established by the department under par. (c).

BILL

1 (c) The fund's treasurer shall determine the total amount due from employers
2 electing reimbursement financing under this section that is uncollectible as of June
3 30 of each year, but not including any amount that ^{the department} became payable prior to January
4 ~~1, 2004~~ ^{to be uncollectible prior to January 1, 2004} ^{the department determined} No amount may be treated as uncollectible under this paragraph unless the
5 department has exhausted all reasonable remedies for collection of the amount,
6 including liquidation of the assurance required under sub. (4). The department shall
7 charge the total amounts so determined to the uncollectible reimbursable benefits
8 account under s. 108.16 (6w). Whenever, as of June 30 of any year, this account has
9 a negative balance of \$5,000 or more, the treasurer shall determine the rate of an
10 assessment to be levied under par. (b) for that year, which shall then become payable
11 by all employers that have elected reimbursement financing under this section as of
12 that date.

13 (d) The rate of assessment under this subsection for each calendar year shall
14 be a rate, when applied to the payrolls of all employers electing reimbursement
15 financing under this section for the preceding calendar year, that will generate an
16 amount that equals the total amount determined to be uncollectible under par. (c),
17 but not more than \$200,000 for any year.

18 (e) Except as provided in par. (f), the rate of each employer's assessment under
19 this subsection for any calendar year is the product of the rate determined under par.
20 (d) multiplied by the employer's payroll for the preceding calendar year, as reported
21 by the employer under s. 108.17 (2) or, in the absence of reports, as estimated by the
22 department.

23 (f) If any employer would otherwise be assessed an amount less than \$10 for
24 a calendar year, the department shall, in lieu of requiring that employer to pay an

BILL**SECTION 27**

1 assessment for that calendar year, apply the amount that the employer would have
2 been required to pay to the other employers on a pro rata basis.

3 (g) The department shall bill assessments to employers under this subsection
4 in the same manner as provided in sub. (5) (f) for the month of September in each
5 year, and the assessment is due for payment in the same manner as other payments
6 under sub. (5) (f). If any assessment is past due, the department shall assess interest
7 on the balance due under s. 108.22. If any employer is delinquent in paying an
8 assessment under this subsection, the department may terminate the employer's
9 election of reimbursement financing under this section as of the close of any calendar
10 year in which the employer remains delinquent.

11 **SECTION 28.** 108.16 (6w) and (6x) of the statutes are created to read:

12 108.16 (6w) The department shall maintain within the fund an uncollectible
13 reimbursable benefits account to which the department shall credit all amounts
14 received from employers under s. 108.151 (7).

15 (6x) The department shall charge to the uncollectible reimbursable benefits
16 account the amount of any benefits paid from the balancing account that are
17 reimbursable under s. 108.151 but for which the department does not receive
18 reimbursement after the department exhausts all reasonable remedies for collection
19 of the amount.

20 **SECTION 29.** 108.16 (8) (e) 1. of the statutes is amended to read:

21 108.16 (8) (e) 1. At the time of business transfer, the transferor and the
22 transferee are owned, managed, or controlled in whole or in substantial part, either
23 directly or indirectly by legally enforceable means or otherwise, by the same interest
24 or interests. Without limitation by reason of enumeration, it is presumed unless
25 shown to the contrary that the "same interest or interests" includes the spouse, child,

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1 or parent of the individual who owned, managed or controlled the business, or any
2 combination of more than one of them.

3 **SECTION 30.** 108.16 (8) (em) of the statutes is created to read:

4 108.16 (8) (em) If, after the transferee of a business has been deemed a
5 successor under par. (e), the department determines that a substantial purpose of the
6 transfer of the business was to obtain a reduced contribution rate, then the
7 department shall treat the transfer as having no effect for purposes of this chapter
8 and shall, retroactively to the date of the transfer, reassign to the transferor all
9 aspects of the transferor's account experience and liability that had been assigned
10 to the transferee, together with all aspects of the transferee's account experience
11 related to the transferred business, and shall recompute the transferor's
12 contribution rate as provided in par. (h).

13 **SECTION 31.** 108.16 (8) (h) of the statutes is amended to read:

14 108.16 (8) (h) The department shall determine or redetermine the contribution
15 rate for a successor subject to this chapter immediately prior to the date of the
16 transfer shall be redetermined, as of the applicable computation date, to apply to the
17 calendar year following the date of transfer and rates for the transferor and the
18 successor as of the date of the transfer of the business. The rates shall apply
19 beginning on that date and shall thereafter be redetermined whenever required by
20 s. 108.18. For the purposes of s. 108.18, the department shall determine the
21 experience under this chapter of the successor's account by allocating to the
22 successor's account for each period in question the respective proportions of the
23 transferor's payroll and benefits which the department determines to be properly
24 assignable to the business transferred.

25 **SECTION 32.** 108.16 (8) (im) of the statutes is created to read:

BILL**SECTION 32**

1 108.16 (8) (im) Notwithstanding pars. (b) to (i), a transferee who is not subject
2 to this chapter on the date of transfer of a business shall not be deemed a successor
3 to the transferor if the department determines that the transfer occurred solely or
4 primarily for the purpose of obtaining a lower contribution rate for the transferee
5 than the rate that would otherwise apply if the transferee were deemed a new
6 employer. In determining whether a business was transferred solely or primarily for
7 the purpose of obtaining a lower contribution rate for the transferee than the rate
8 that would otherwise apply, the department shall use objective factors, which may
9 include the cost of acquiring the business, whether the transferee continued the
10 business enterprise of the transferred business, the length of time that the business
11 enterprise was continued, or whether a substantial number of new employees were
12 hired for the performance of duties unrelated to the business activity conducted by
13 the transferor prior to the transfer.

14 **SECTION 33.** 108.16 (8) (m) to (o) of the statutes are created to read:

15 108.16 (8) (m) If any person knowingly makes or attempts to make a false
16 statement or representation to the department in connection with any investigation
17 to determine whether an employer qualifies to be deemed a successor under par. (e)
18 or (im) or any other provision of this chapter for the purpose of determining the
19 assignment of a contribution rate, or if any person knowingly advises another person
20 to do so, including by willful evasion, nondisclosure, or misrepresentation, the person
21 is subject to the following penalties:

22 1. If the person is an employer, then the department shall assign the employer
23 the highest contribution rate assignable under this chapter for the year, during
24 which the violation or attempted violation occurs and the 3 succeeding years, except
25 that if the department assigns the employer the highest contribution rate for any

BILL

1 such year under other provisions of this chapter or if the increase in the employer's
2 contribution rate under this subdivision would be less than 2 percent on its payroll
3 for any year, then the department shall increase the employer's contribution rate by
4 2 percent on its payroll for each year in which a penalty applies under this
5 subdivision.

6 2. If the person is not an employer, the person may be required to forfeit not
7 more than \$5,000.

8 3. The person is guilty of a Class A misdemeanor.

9 (n) The department shall utilize uniform procedures to identify businesses that
10 are transferred under this subsection.

11 (o) Paragraphs (e) 1., (em), (h), (im), and (m) shall be interpreted and applied,
12 insofar as possible, to meet the minimum requirements of any guidance issued by or
13 regulations promulgated by the U.S. department of labor.

14 **SECTION 34.** 108.17 (2b) of the statutes is created to read:

15 108.17 (2b) The department shall prescribe a form and methodology for filing
16 contribution reports under sub. (2) electronically using the Internet. Each employer
17 of 50 or more employees, as determined under s. 108.22 (1) (ae), that does not use an
18 employer agent to file its contribution reports under this section shall file its
19 contribution reports electronically using the Internet on the form prescribed by the
20 department. Once an employer becomes subject to the reporting requirements under
21 this subsection, it shall continue to file its reports under this subsection unless that
22 requirement is waived by the department.

23 **SECTION 35.** 108.17 (2g) of the statutes is amended to read:

24 108.17 (2g) An employer agent that prepares reports under sub. (2) on behalf
25 of less than 25 employers shall file those reports electronically using the Internet on

BILL**SECTION 35**

1 the form prescribed by the department under sub. (2b). An employer agent that files
2 prepares reports under sub. (2) on behalf of 25 or more employers shall file those
3 reports using an electronic medium and format approved by the department. An
4 employer agent that becomes subject to the reporting requirement under this
5 subsection shall file its initial reports under this subsection for the 4th quarter
6 beginning after the quarter in which the employer agent becomes subject to the
7 reporting requirement. Once an employer agent becomes subject to the reporting
8 requirement under this subsection, the employer agent shall continue to file its
9 reports under this subsection unless that requirement is waived by the department.

10 **SECTION 36.** 108.18 (1) (a) of the statutes is amended to read:

11 108.18 (1) (a) ~~Each~~ Unless a penalty applies under s. 108.16 (8) (m), each
12 employer shall pay contributions to the fund for each calendar year at whatever rate
13 on the employer's payroll for that year duly applies to the employer pursuant to this
14 section.

15 **SECTION 37.** 108.18 (2) (d) of the statutes is amended to read:

16 108.18 (2) (d) No later than 90 days after the department issues an initial
17 determination that a person is an employer, any employer other than an employer
18 specified in par. (c), having a payroll exceeding \$10,000,000 in a calendar year may
19 elect that its contribution rate shall be one percent on its payroll for the first 3
20 calendar years with respect to which contributions are credited to its account. In
21 such case, the department shall credit the amount collected in excess of this amount
22 against liability of the employer for future contributions after the close of each
23 calendar year in which an election applies. If an employer qualifies for and makes
24 an election under this paragraph, the employer shall, upon notification by the
25 department, make a special contribution after the close of each quarter equivalent

BILL

1 to the amount by which its account is overdrawn, if any, for the preceding quarter.
2 The department shall credit any timely payment of contributions to the employer's
3 account before making a determination of liability for a special contribution under
4 this paragraph. An employer does not qualify for an alternate contribution rate
5 under this paragraph at any time during which the employer's special contribution
6 payment is delinquent. An employer that is the transferee of a business enterprise
7 but does not qualify to be treated as a successor under s. 108.16 (8) (im) does not
8 qualify for an alternate contribution rate under this paragraph.

9 **SECTION 38.** 108.205 (1m) of the statutes is created to read:

10 108.205 (1m) The department shall prescribe a form and methodology for filing
11 reports under sub. (1) electronically using the Internet. Each employer agent shall
12 file its reports electronically using the Internet on the form prescribed by the
13 department.

14 **SECTION 39.** 108.205 (2) of the statutes is amended to read:

15 108.205 (2) All employers of ~~100~~ 50 or more employees, as determined under
16 s. 108.22 (1) (ae), shall file the quarterly report under sub. (1) using an electronic
17 medium approved by the department for such employers. An employer that becomes
18 subject to the reporting requirement under this subsection shall file its initial report
19 under this subsection for the 4th quarter beginning after the quarter in which the
20 employer becomes subject to the reporting requirement. Once an employer becomes
21 subject to the reporting requirement under this subsection, the employer shall
22 continue to file its quarterly reports under this subsection unless that requirement
23 is waived by the department.

24 **SECTION 40.** 108.22 (1) (ad) of the statutes is renumbered 108.22 (1) (ad) 1.

25 **SECTION 41.** 108.22 (1) (ad) 2. of the statutes is created to read:

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1 108.22 (1) (ad) 2. An employer that is subject to the reporting requirements
2 under s. 108.17 (2b) and that fails to file a contribution report in accordance with s.
3 108.17 (2b) may be assessed a penalty by the department in the amount of \$25 for
4 each report that is not filed in accordance with s. 108.17 (2b).

5 **SECTION 42.** 108.22 (1) (b) of the statutes is amended to read:

6 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),
7 108.151 (5) (f) or (7), 108.16 (8), 108.17, or 108.205 would otherwise be a Saturday,
8 Sunday, or legal holiday under state or federal law, the due date is the next following
9 day which is not a Saturday, Sunday, or legal holiday under state or federal law.

10 **SECTION 43.** 108.22 (1) (c) of the statutes is amended to read:

11 108.22 (1) (c) Any report or payment, except a payment required by s. 108.15
12 (5) (b) or 108.151 (5) (f) or (7), to which this subsection applies is delinquent, within
13 the meaning of par. (a), unless it is received by the department, in the form prescribed
14 by law or rule of the department, no later than its due date as determined under par.
15 (b), or if mailed is either postmarked no later than that due date or is received by the
16 department no later than 3 days after that due date. Any payment required by s.
17 108.15 (5) (b) or 108.151 (5) (f) or (7) is delinquent, within the meaning of par. (a),
18 unless it is received by the department, in the form prescribed by law, no later than
19 the last day of the month in which it is due.

20 **SECTION 44.** 108.22 (1m) of the statutes is amended to read:

21 108.22 (1m) If an employer owes any contributions, reimbursements or
22 assessments under s. 108.15 or 108.151, interest, fees, or payments for forfeitures or
23 other penalties to the department under this chapter and fails to pay the amount
24 owed, the department has a perfected lien upon the employer's right, title, and
25 interest in all of its real and personal property located in this state in the amount

BILL

1 finally determined to be owed, plus costs. Except where creation of a lien is barred
2 or stayed by bankruptcy or other insolvency law, the lien is effective when the
3 department issues a determination of the amount owed under s. 108.10 (1) and shall
4 continue until the amount owed, plus costs and interest to the date of payment, is
5 paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it
6 shall become effective immediately upon expiration or removal of such bar or stay.
7 The perfected lien does not give the department priority over lienholders,
8 mortgagees, purchasers for value, judgment creditors, and pledges whose interests
9 have been recorded before the department's lien is recorded.

10 **SECTION 45.** 108.22 (2) of the statutes is amended to read:

11 108.22 (2) (a) 1. If any employing unit or any individual who is found personally
12 liable under sub. (9) fails to pay to the department any amount found to be due it in
13 proceedings pursuant to s. 108.10, provided that no appeal or review permitted
14 under s. 108.10 is pending and that the time for taking an appeal or review has
15 expired, the department or any authorized representative may issue a warrant
16 directed to the clerk of circuit court for any county of the state.

17 2. The clerk of circuit court shall enter in the judgment and lien docket the
18 name of the employing unit or individual mentioned in the warrant and the amount
19 of the contributions, interest, costs and other fees for which the warrant is issued and
20 the date when such copy is entered.

21 3. A warrant entered under subd. 2. shall be considered in all respects as a final
22 judgment constituting a perfected lien upon the employing unit's or individual's
23 right, title and interest in all real and personal property located in the county where
24 the warrant is entered.

BILL**SECTION 45**

1 4. The department or any authorized representative may thereafter file an
2 execution with the clerk of circuit court for filing by the clerk of circuit court with the
3 sheriff of any county where real or personal property of the employing unit or
4 individual is found, commanding the sheriff to levy upon and sell sufficient real and
5 personal property of the employing unit or individual to pay the amount stated in the
6 warrant in the same manner as upon an execution against property issued upon the
7 judgment of a court of record, and to return the warrant to the department and pay
8 to it the money collected by virtue thereof within 60 days after receipt of the warrant.

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

18 **SECTION 46.** 108.22 (8) (b) of the statutes is renumbered 108.22 (8) (b) 1. and
19 amended to read:

20 108.22 (8) (b) 1. To recover any overpayment which is not otherwise repaid or
21 recovery of which has not been waived, ~~or any assessment under s. 108.04 (11) (em),~~
22 the department may recoup the amount of the overpayment from benefits the
23 individual would otherwise be eligible to receive, or file a warrant against the liable
24 individual in the same manner as is provided in this section for collecting delinquent
25 payments from employers, or both, ~~but only to the extent of recovering.~~

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1 3. Any recovery under this paragraph is limited to the actual amount of the
2 overpayment or assessment and any costs and disbursements, without interest.

3 **SECTION 47.** 108.22 (8) (b) 2. of the statutes is created to read:

4 108.22 (8) (b) 2. To recover any assessment under s. 108.04 (11) (cm), the
5 department may file a warrant against the liable individual in the same manner as
6 is provided in this section for collecting delinquent payments from employers.

7 **SECTION 48.** 108.225 (1) (a) of the statutes is amended to read:

8 108.225 (1) (a) “Contribution” includes a reimbursement or assessment under
9 s. 108.15, 108.151, or 108.152, interest for a nontimely payment, fees, and any
10 payment due for a forfeiture imposed upon an employing unit under s. 108.04 (11)
11 (c) or other penalty assessed by the department under this chapter.

12 **SECTION 49.** 108.225 (20) of the statutes is amended to read:

13 108.225 (20) COST OF LEVY. Any Whenever property is secured by means of a
14 levy, any 3rd party in possession of the debtor’s property is entitled to collect from
15 the debtor a levy fee of \$5 for each levy in any case where property is secured through
16 the levy which a debt is satisfied by means of a single payment and \$15 for each levy
17 in which a debt is satisfied by means of more than one payment. The fee is payable
18 from the property levied against and is in addition to the amount of the levy. The 3rd
19 party shall deduct the fee from the proceeds of may charge the fee to the debtor at
20 the time the party transfers the proceeds of the levy to the department.

21 **SECTION 50.** 108.24 (2) of the statutes is amended to read:

22 108.24 (2) Any Except as provided in s. 108.16 (8) (m), any person who
23 knowingly makes a false statement or representation in connection with any report
24 or as to any information duly required by the department under this chapter, or who
25 knowingly refuses or fails to keep any records or to furnish any reports or information

BILL**SECTION 50**

1 duly required by the department under this chapter, shall be fined not less than \$100
2 nor more than \$500, or imprisoned not more than 90 days or both; and each such false
3 statement or representation and every day of such refusal or failure constitutes a
4 separate offense.

SECTION 51. Initial applicability.

5
6 (1) The treatment of section 108.02 (12) (a) of the statutes first applies with
7 respect to employment after December 31, 2005. *and 108009(2)(b) and (4)*

8 (2) The treatment of section 108.02 (15) (j) 7. of the statutes first applies with
9 respect to employment after December 31, 2005.

10 (3) The treatment of section 108.02 (21e) (intro.) of the statutes first applies
11 with respect to determinations issued under sections 108.09 and 108.10 of the
12 statutes in the first week beginning in January 2006 or, with respect to
13 determinations that are appealed, to decisions issued under sections 108.09 and
14 108.10 of the statutes in the first week beginning in January 2006.

15 (4) The treatment of section 108.04 (1) (b) 1. and 3. (intro.) and (c) of the statutes
16 first applies with respect to suspensions and terminations of employment occurring
17 on the effective date of this subsection.

18 (5) The treatment of section 108.04 (1) (e) of the statutes first applies with
19 respect to weeks of unemployment beginning on the effective date of this subsection.

20 (6) The treatment of section 108.04 (7) (f) of the statutes first applies with
21 respect to terminations of employment occurring on the effective date of this
22 subsection.

23 (7) The treatment of section 108.04 (13) (c), (e), and (g) of the statutes first
24 applies with respect to ~~determinations~~ *redeterminations* issued under sections 108.09 ~~and 108.10~~ *of*

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1 the statutes on March 5, 2006, or, with respect to ^{matters in which no} determinations that are appealed,
2 ^{redetermination is issued with respect} to decisions issued under sections 108.09 and 108.10 of the statutes on March 5, 2006.

3 (8) The treatment of section 108.04 (16) (b) and (c) 2. of the statutes first applies
4 with respect to ^{determinations} redeterminations issued under section 108.09 of the statutes on the
5 effective date of this subsection or, with respect to ^{determinations that} matters in which no
6 ^{are appealed} redetermination is issued, with respect to decisions issued under section 108.09 of
7 the statutes on the effective date of this subsection.

8 (9) The treatment of section 108.05 (3) (a) of the statutes first applies with
9 respect to weeks of unemployment beginning on the effective date of this subsection.

10 (10) The treatment of section 108.09 (2) (bm) and (4s) of the statutes first
11 applies with respect to benefit years beginning on the effective date of this
12 subsection.

13 ^{No B} (10) ~~(11)~~ The treatment of section 108.09 (4n) of the statutes first applies with
14 respect to appeals filed on the effective date of this subsection.

15 ~~(11)~~ ⁽¹¹⁾ ~~(12)~~ The treatment of sections 108.151 (4) (b) and (7), 108.16 (6w) and (6x),
16 108.22 (1) (b) and (c) and (1m), and 108.225 (1) (a) of the statutes first applies with
17 respect to payrolls for the ²⁰⁰⁵ ~~2006~~ calendar year.

18 ⁽¹²⁾ ~~(13)~~ The treatment of sections 108.16 (8) (e) 1., (em), (h), (im), (m), and (n),
19 108.18 (1) (a) and (2) (d), and 108.24 (2) of the statutes first applies with respect to
20 transfers of businesses occurring after December 31, 2005.

21 ⁽¹³⁾ ~~(14)~~ The treatment of section 108.17 (2g) of the statutes first applies with
22 respect to reports filed under section 108.17 (2) of the statutes for the 2nd quarter
23 beginning after the quarter that includes the effective date of this subsection.

24 ⁽¹⁴⁾ ~~(15)~~ The treatment of section 108.205 (2) of the statutes first applies to
25 employers of 75 to 99 employees with respect to reports required under section

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SECTION 51

1 108.205 (2) of the statutes for the 2nd quarter beginning after the quarter that
2 includes the effective date of this subsection.

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(15) ~~(16)~~ The treatment of section 108.205 (2) of the statutes first applies to
employers of 50 to 74 employees with respect to reports required under section
108.205 (2) of the statutes for the 6th quarter beginning after the quarter that
includes the effective date of this subsection.

(16) ~~(17)~~ The treatment of section 108.22 (2) of the statutes first applies with respect
to liabilities existing on the effective date of this subsection.

(17) ~~(18)~~ The treatment of section 108.225 (20) of the statutes first applies with
respect to levies served on the effective date of this subsection.

SECTION 52. Effective date.

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

(END)

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108.105(2) The department may suspend the privilege of an agent to act as an employer representative under this chapter for up to one year if during any 12-month period:

in five percent or more of all appeal tribunal hearings held in which employers

represented by the agent are appellants there is a final appeal tribunal decision finding

that the employer represented by the agent failed to provide correct and complete

information under s108.04(13) (g) and there is no finding that the employer had good

cause for such failure.

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requested by DWD during a fact finding investigation

that

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2005 BILL

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1 AN ACT *to amend* 20.445 (1) (nb), 20.445 (1) (nc), 20.445 (1) (nd) and 20.445 (1)
2 (ne) of the statutes; **relating to:** use of certain unemployment insurance
3 revenues and making appropriations.

Subsub

Administration Funding
Analysis by the Legislative Reference Bureau

Currently, the federal government provides regular grants to this state for the purpose of financing the cost of unemployment insurance (UI) administration. In addition, the federal government provides special grants to this state that may be used for the purpose of UI administration, for the payment of UI benefits, or for certain other purposes.

Unemployment insurance

** unemployment insurance*

This bill appropriates \$2,500,000 in fiscal year 2005-06 and \$2,500,000 in fiscal year 2006-07 from these special grants to be used for UI information technology development.

Currently, only the first \$2,389,107 of the moneys in a special grant for federal fiscal year 2002 may be used for UI administration. This bill permits an additional \$2,000,000 of the moneys received in the special grant for federal fiscal year 2002 to be used for UI administration. The bill further provides that none of the moneys in any special federal grant for federal fiscal years 2000, 2001, or 2002 may be encumbered or expended after September 30, 2007. The changes potentially increase the liability of employers to finance UI benefits through contributions (taxes). *Use of special federal grants*

\$2,000,000
Unemployment insurance

Subsub

Currently, from the special grants received by this state from the federal government for UI purposes, special sum certain appropriations are made for

JNS 6 A: 2

BILL

information technology systems development, the apprenticeship program, and payment of bank service costs. If the treasurer of the unemployment reserve fund determines that these moneys are more than sufficient for these purposes, the treasurer must transfer any excess moneys in these appropriation accounts to the main account to which federal ~~un~~ revenues are credited. This bill eliminates the requirement for the treasurer to make these transfers.

unemployment insurance

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

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

2 20.445 (1) (nb) *Unemployment information technology systems; federal moneys.*

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

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

15 20.445 (1) (nc) *Unemployment insurance administration; special federal*
16 *moneys.* All moneys received from the federal government under section 903 of the
17 federal Social Security Act, as amended, for federal fiscal years 2000 and 2001 and
18 the first \$2,289,107 \$4,289,107 of the moneys received from the federal government
19 under that act for federal fiscal year 2002, as authorized by the governor under s.

Jobs 7-1:1

BILL

information technology systems development, the apprenticeship program, and payment of bank service costs. If the treasurer of the unemployment reserve fund determines that these moneys are more than sufficient for these purposes, the treasurer must transfer any excess moneys in these appropriation accounts to the main account to which federal UI revenues are credited. This bill eliminates the requirement for the treasurer to make these transfers.

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

1 SECTION ~~#~~ 20.445 (1) (nb) of the statutes is amended to read:

2 20.445 (1) (nb) ~~Unemployment information technology systems; federal moneys.~~
Unemployment information technology systems; federal moneys.

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

14 SECTION ~~#~~ 20.445 (1) (nc) of the statutes is amended to read:

15 20.445 (1) (nc) *Unemployment insurance administration; special federal*
16 *moneys.* All moneys received from the federal government under section 903 of the
17 federal Social Security Act, as amended, for federal fiscal years 2000 and 2001 and
18 the first \$2,289,107 ~~\$4,289,107~~ *\$3,289,107* of the moneys received from the federal government
19 under that act for federal fiscal year 2002, as authorized by the governor under s.

7057-1:2

BILL

1 16.54, to be used for administration of unemployment insurance. No moneys may
2 be encumbered or expended from this appropriation after September 30, 2007.

3 **SECTION 3** 20.445 (1) (nd) of the statutes is amended to read:

4 20.445 (1) (nd) *Unemployment insurance administration; apprenticeship.*

5 From the moneys received from the federal government under section 903 (d) of the
6 federal Social Security Act, as amended, the amounts in the schedule, as authorized
7 by the governor under s. 16.54, to be used for administration by the department of
8 apprenticeship programs under subch. I of ch. 106. All moneys transferred from par.
9 (n) for this purpose shall be credited to this appropriation account. Notwithstanding
10 s. 20.001 (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 this paragraph.

16 **SECTION 4** 20.445 (1) (ne) of the statutes is amended to read:

17 20.445 (1) (ne) *Unemployment administration; bank service costs.* From the
18 moneys received by this state under section 903 (d) of the federal Social Security Act,
19 as amended, all moneys transferred from the appropriation account under par. (n)
20 to be used for the payment of the cost of banking services incurred by the
21 unemployment reserve fund. Notwithstanding s. 20.001 (3) (c), the treasurer of the
22 unemployment reserve fund shall transfer any unencumbered balance in this
23 appropriation account that is not needed or available to carry out the purpose of this
24 appropriation to the appropriation account under par. (n). No moneys may be
25 expended from this appropriation unless the treasurer of the unemployment reserve

BILL

ANS 7-1:3

1 fund determines that such expenditure is currently needed for the purpose specified
2 in this paragraph.

3 **SECTION 5. Appropriation changes.**

4 (1) In the schedule under section 20.005 (3) of the statutes for the appropriation
5 to the department of workforce development under section 20.445 (1) (nb) of the
6 statutes, as affected by the acts of 2005, the dollar amount is increased by \$2,500,000
7 for fiscal year 2005-06 and the dollar amount is increased by \$2,500,000 for fiscal
8 year 2006-07 to be used for the purpose for which the appropriation is made.

9 (END)

JWS 15-24

108.105(2) The department may suspend the privilege of an agent to act as an employer representative under this chapter for up to one year if during any 12-month period in five percent or more of all appeal tribunal hearings held in which employers represented by the agent are appellants there is a final appeal tribunal decision finding that the employer represented by the agent failed to provide correct and complete information under s108.04(13) (g) and there is no finding that the employer had good cause for such failure.

No 4

[Handwritten scribbles]

5
A

requested by the department during a fact-finding investigation

TYPED

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2978/4ins
JTK.....

INS 18-10:

(h) If the payroll of an employer is adjusted to decrease the amount of the payroll after a contribution report for the employer is filed under s. 108.17 (2), the department shall refund any assessment that is overpaid by the employer under the subsection as a result of the adjustment.

LPS:
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2978/3dn

JTK:wlj:jl



September 20, 2005

Tom Smith:

This draft reflects the discussions at our meeting of September 28^o
1. Please review the revised text of s. 108.04 (1) (c), ~~stats~~, in this draft. The text reflects my notes of our discussions, but I'm not sure there is practical difference in the operative language related to suspensions and terminations.

2. We may still need to address one or more of the following items in the Drafter's Note to LRB-2978/1: 4. b., 5., 6., and 8.

2978/PI0

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

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

LRB-2978/4dn
JTK:wlj:ch

October 4, 2005

Tom Smith:

1. This draft reflects the discussions at our meeting of September 28.
2. We may still need to address one or more of the following items in the Drafter's Note to LRB-2978/P1: 4. b., 5., 6., and 8.

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

MGM 3. (Revised June 29, 2005) Amend the definition of professional employer organization to permit professional employer organizations to share the responsibility with their clients to set the rate of pay of the employees working for the client company.

The management proposal would allow professional employer organizations to share the responsibility for setting the rate of pay of its employees with any of its clients. Because the professional employer organization is operating within a statutory framework defining the totality of its responsibilities, the impact of the proposed change would depend on the balance between what the professional employer organization is required to do and how it shares this responsibility with the client.

Draft statutory language is shown below. The purpose of the underlined language is to clarify the fact that a professional employer organization may share with the client the responsibility for setting the rate of pay.

PROFESSIONAL EMPLOYER ORGANIZATION. "Professional employer organization" means any person who contracts to provide the nontemporary, ongoing employee workforce of a client under a written leasing contract and who under contract and in fact:

- (a) Has the right to hire and terminate the employees who perform services for the client and to reassign the employees to other clients;
- (b) Sets the rate of pay of the employees, which responsibility may be shared with the client, whether or not through negotiations;
- (c) Has the obligation to and pays the employees from its own accounts;
- (d) Has a general right of direction and control over the employees, including corporate officers, which right may be shared with the client to the degree necessary to allow the client to conduct its business, meet any fiduciary responsibility, or comply with any applicable regulatory and statutory requirements;
- (e) Assumes responsibility for the unemployment insurance coverage of the employees, files all required reports, pays all required contributions or reimbursements due on the wages of the employees, and otherwise complies with all of the provisions of this chapter that are applicable to employers on behalf of the client;
- (f) Has the obligation to establish, fund, and administer employee benefit plans for the employees;
- (g) Provides notice of the arrangement to the employees; and
- (h) Provides the nontemporary, ongoing workforces of multiple clients; the majority of which are not under the same ownership, management or control as the person other than through the terms of its written agreements with clients to provide workforces

No significant fiscal effect is expected from the proposal. Its primary purpose is to recognize the client's involvement in setting rates of pay and in other activities when the professional employer organization's primary function is processing payroll transactions and offering fringe benefit plans.

108.16 (8) (h). The department shall determine or redetermine the contribution rate for a successor subject to this chapter immediately prior to the date of the transfer shall be redetermined, as of the applicable computation date, to apply to the calendar year following the date of transfer and the successor as of the beginning of the quarter following the date of transfer and shall thereafter be redetermined whenever required by s. 108.18. For the purposes of s. 108.18, the department shall determine the experience under this chapter of the successor's account by allocating to the successor's account for each period in question the respective proportions of the transferor's payroll and benefits which the department determines to be properly assignable to the business transferred.

Date: April 19, 2005
Proposed by: Department
Prepared by: Melissa Montey

Analysis of Proposed UI Law Change

1. Description of the Proposed Change:

Repeal §108.02(15)(k)14, the exclusion that applies to the employment of certain employees who worked for an employer engaged in the processing of fresh fruits and vegetables solely during the active processing season(s). This repeal would make DWD 145, which defines the active processing seasons, redundant and this rule should also be repealed.

2. Proposed Statutory Language:

"(k) 'Employment' as applied to work for a given employer other than a government unit or nonprofit organization, except as such employer duly elects otherwise with the department's approval, does not include service:

14. ~~By an individual for an employer which is engaged in the processing of fresh perishable fruits or vegetables within a given calendar year if the individual has been employed by the employer solely within the active processing season or seasons, as determined by the department, of the establishment in which the individual has been employed by the employer, and the individual's base period wages with the employer are less than the wages required to start a benefit year under s. 108.04(4)(a), unless the individual was paid wages of \$200 or more for services performed in employment or other work covered by the unemployment insurance law of any state or the federal government, other than work performed for the processing employer, during the 4 most recently completed quarters preceding the individual's first week of employment by the processing employer within that year;"~~

3. Proposer's Reason for the Change:

Unless certain conditions are met, the present statute excludes (for benefit purposes only) the wages paid to certain individuals who work for employers that process fresh perishable fruits or vegetables.

This exclusion does not apply if the individual:

- Earned enough wages to qualify for UI based solely on work for the processing employer, or
- Earned \$200 working for another employer in covered employment during the four completed quarters immediately preceding the first week of work for the processing employer within that year, or
- Worked outside the active processing season(s) for the processing employer. (There are specific active processing seasons for each of 24 fresh fruits and vegetables, with the seasons beginning and ending at various times. The dates for each of these seasons are set forth in DWD 145. All of them begin prior to October 1, some as early as April 25. Of the 24, 18 end after October 1.)

It is not unusual for claimants to work processing more than one type of fresh fruit or vegetable, in more than one of the active processing seasons which often overlap. For example, a claimant may process both peas and carrots for a processing employer. The season for peas begins with the first week ending in June and runs through the third week ending in August. The season for carrots begins the last week ending in July and runs through the first week ending in December. The season for carrots starts shortly before the season for peas ends so this individual could have continuous employment from early June to early December.

Normally an individual who works for a single processing employer throughout multiple processing seasons would have enough wages to qualify for UI benefits. However, an individual who performs the same work for two or more processing employers might not qualify solely because of this exclusion. Similarly, a new entrant to the labor market might not qualify for UI benefits because the new entrant did not earn wages before the processing season even though this person may have performed the same amount of work as another individual who has worked previously.

Many of the UI claimants who work for food processing employers are migrant workers who travel to Wisconsin each year to perform this work. Employers depend on these workers and would have difficulty finding employees if it were not for the migrant workers.

The work performed by active processing season employees is basically factory work. It is not agricultural work. As such, these individuals should not have to meet higher eligibility criteria than other factory workers. And, within the same industry, two workers who perform the same work should not be treated differently.

During 2000, there were 817 processing season employment decisions issued. Of that number, only 202 (25%) ruled the employment was excluded. During 2001, there were 835 processing season employment decisions issued. Of that number, only 185 (22%) ruled the employment excluded. There were many other claims involving processing employers where a decision was not issued because the claimant was separately eligible based on work for the processing employer.

During 2002, there were 309 processing season employment decisions. The decline in the number of decisions was due to automation. During overnight processing the system scanned wages to determine if the individual had separate qualifying work with only the processing employer or earned \$200 in the four quarters preceding work with the processing employer, if either was present, the system washed out the hold. Of the 309 decisions, 164 (53%) ruled the employment excluded. The number of employment exclusions is comparable to those in 2000 and 2001 so it can be assumed that there were approximately the same number of decisions washed out.

It should be noted that wage exclusion is only the first step in the eligibility process. With or without excluded wages, a number of claimants are not going to be eligible for UI benefits for other reasons such as quitting, having been discharged due to misconduct, or for refusing suitable work. Moreover, a claimant who is not attached to the labor force is unlikely to earn the wages necessary to requalify for benefits.

During the quarters that have the highest active processing employment, there were well over 10,000 individuals working for processing employers. Eliminating this provision would

result in wage inclusion for less than 2% of those employees and even fewer of those with wages included would receive benefits.

It is also important to note that the active processing season exclusion applies only to benefit eligibility and entitlement. As such, the employer is required to pay UI taxes based on all the wages paid to all of its employees, even if the wages are subject to the benefit exclusion in the law.

The value of this provision to employers seems minimal and the impact on claimants unfair. For these reasons, this provision should be repealed.

4. Brief History and Background of Current Provision:

There has been a provision to exclude employment based on work for an employer that processes fresh fruits or vegetables in some form or other since almost the beginning of the UI statutes. The purpose of the provision was to assure that claimants have an attachment to the labor force.

Over time, eligibility formulas have been revised to exclude workers not attached to the labor force. For example, a claimant must have 8 times his or her weekly benefit rate between benefit years. At the present minimum rate of \$49, the claimant with the lowest possible benefit rate would need \$392 to meet this test – almost twice the amount required for the wage exclusion test. Claimants with a higher weekly benefit rate would need even more. Similarly, the claimant must have wages of 4 times the weekly benefit rate outside the calendar quarter in which wages are the highest – only \$4 less than the wage exclusion test at the lowest possible benefit rate. Consequently, the wage exclusion now applies primarily to individuals who work for multiple employers or are new entrants to the labor market even though they may have the same earnings as those to whom the exclusion does not apply.

5. Effects of the Proposed Change:

Policy: This change would make all services performed for processing employers covered employment.

Characteristics of seasonal food processors are shown in the table below. Because most of the benefits are paid by employers with the maximum tax rate, additional benefits charged to these accounts should not have much effect overall.

CHARACTERISTICS OF SEASONAL FOOD PROCESSORS
(Canning, Freezing, and Pickling)

2003 Tax Rate	Number	2002 Total Payroll (million\$)	2002 Taxable Payroll (million\$)	2002 Taxes (million\$)	2002 Benefits (million\$)
Maximum Rate	8	\$179.5	\$ 69.8	\$6.4	\$10.9
Negative Balance	5	23.8	11.9	.8	.8
Positive Balance	33	177.6	44.1	1.8	2.2
TOTALS	46	\$380.9	\$125.8	\$9.0	\$13.9

Administrative Feasibility: This change would ease the administration of the UI statutes. It would reduce the number of considerations when taking an initial claim. A large number of these issues are washed out at the time of the initial claim. The agency does not receive any workload count for a washed out issue, even though time is spent determining if there is an issue that must be adjudicated. Repealing this exclusion would eliminate that time.

Equitable: The question of whether the employer is covered or excluded is only adjudicated if the claimant has enough base period wages to qualify for UI benefits before the exclusion is considered.

Maintaining this exclusion means that claimants who work for a processing employer must meet additional qualifying conditions in order to be eligible for benefits, conditions, which the majority of claimants who performed an equivalent amount of work and earned comparable wages do not have to meet.

There is no comparable federal exclusion. As a result, employers are required to pay UI taxes based on wages paid to these individuals, even though the individuals may never be eligible to draw benefits based on such work.

This change would provide equal treatment to individuals in comparable situations.

Fiscal: Under current law a limited exclusion of the wages of an employee of a seasonal food processor is permitted in certain circumstances. Under the existing exclusion wages are excluded only for benefit purposes. Because there is no similar federal exclusion, all of the wages of the food processor are subject to state and federal taxes, even though some of these wages may be excluded for purposes of establishing benefit eligibility and entitlement.

Three conditions are imposed to assure that the wages of workers attached to the labor market are not excluded. First, wages may not be excluded if the employee works for the processor outside its processing season, in other words, is most likely a permanent employee of the processor. Second, wages may not be excluded if the employee earns \$200 from another employer at any time during the four calendar quarters preceding the processing season. Third, wages may not be excluded from any processor if they are sufficient by themselves to qualify the worker for benefits.

An extensive study of all wages from Wisconsin seasonal food processors was conducted to determine the fiscal effect of the present exclusion. Approximately 24,600 employees were followed until their wages could no longer be used in any benefit year.

The exclusion of canning season wages for benefit purposes under current Unemployment Insurance law could not be applied to 90% of the employees of seasonal food processors. Approximately 13,400 employees had wages from the food processor outside the canning season and were not considered seasonal employees. Of the remaining 11,200 workers, 7,000 would not have wages excluded because of earnings from other employers and 1,800 would not have wages excluded because they earned enough to qualify on the basis of wages earned from each seasonal food processor that employed them. The remaining 2,400 earned seasonal food processing wages that were potentially excludable.

Of the 2,407 employees with potentially excludable seasonal food processing wages, 1,774 never earned enough to qualify for benefits from all the employers for which they worked. Of

the remaining 633 workers, 449 never claimed benefits and 184 had wages that were excluded.

Had not the wages of the 184 claimants been excluded, about one third would newly become eligible while another one third would receive more in benefits. The rest were nonmonetarily ineligible because they had quit, were discharged due to misconduct, or refused suitable work and they had not requalified by earning additional wages. The added cost of using presently excludable wages totaled approximately \$200,000 for 123 individuals.

6. State and Federal Issues:

Repeal of §108.02(15)(k)14 would make DWD 145 redundant. That administrative rule should also be repealed.

There should be no conformity issues or other federal issues. There is no comparable federal exclusion.

7. Proposed Effective/Applicability Date:

This change should first apply to benefits years beginning the effective date of the applicable act (the first Sunday following publication of the act).

Summary of 2004-2005 Law and Rule Change Proposals

Benefits

- 108.04(1)(c) Added language to apply this provision to partial weeks of a family and medical leave under (1)(b)(3), to partial weeks of a disqualification for a suspension under (1)(b)1 and to the week a termination occurs under (1)(b)1 if it affects only a portion of a week.
- 108.04(1)(e) Repealed so that work search waivers can be applied to self-employment individuals.
- 108.04(7)(f) Repealed --- situation is covered under 108.04(7)(b).
- 108.04(13) Redefined employer fault to include an employer's failure to respond to an adjudicator's request for information during a fact-finding interview unless an ALJ finds that the failure is with good cause.
- 108.04(16)(e) Removed reference to sections 108.04(2)-(d) to prevent an interpretation that would noncharge employers when an A&A disqualification is not imposed because the claimant is enrolled in approved training.
- 108.05(3)(a) Repealed the wage disregard to volunteer firefighters
- 108.068(2) Amended language to fix conflicting effective dates for benefits and tax.
- 108.151 Allows for revocation of the rights of an employer agent to represent employers for continued failure to provide information during a fact finding investigation. The number of failures that will be required to revoke an agent's rights has not yet been determined.
- 108.22(8)(b) Deleted authority to recover imposter penalties from future UI benefits due to federal conformity requirement
- DWD 127 Various changes to update and clean up rule.
- DWD 133 Modified and codified existing policy for adjudicating refused assignments with a Temporary Help Agency.

Tax

- 108.151 Added a bad debt assessment for nonprofit employers.
- 108.16 Changes to successorship statute to comply with federal law regarding SUTA Dumping.
- 108.17 Require electronic reporting of wage and tax reports for employers with 50 or more employees that does not use an agent. Require electronic reporting of wage and tax reports for employers with 25 or more employees if report is prepared by an agent.
- 108.22 Clarified (1m) to indicate that a levy fee is in addition to the levy amount so that the fee is not deducted from the amount sent to the Department. Also increased the levy fee to \$15 for multiple-payment levies.
- Added "individual" to (2) to include officers, employees, members and managers as those who qualify for a warrant for an employer's delinquent unpaid taxes. (Allows warrant against individual who was found personally liable.)

Both

- 108.02(12) Changed (a) to clarify that an individual does not need to be working "in employment" under 108.02(15) to be considered an employee under 108.02(12).
- Amended (dm) and (dn) to clarify that a sole owner or partner is not an employee only with respect to those services performed for his own business.
- 108.02(15)(j) New exclusion under (7) for work performed as an AmeriCorps participant, except for service performed as part of a professional corps program described in 42 USC 12572 (a) (8).
- 108.02(21e) Require an entity that wishes to be treated as professional employer organization to be in the primary business of leasing employees to other businesses.
- 108.09 Made technical changes in (2)(bm) and (4s) to correct the statutory references to 108.02(12).

Legal

- 108.09(4n) Create new provision to allow admission of COED reports without verification or certification by an "expert".

Addendum
Labor and Management Agreed Upon Proposals
10/03/05

1. Discharge for Absenteeism without Notice
 - Written Policy to include
 - ✓ Some way to verify that the employee received the policy (i.e a sign-off)
 - ✓ What constitutes a "tardy".
 - ✓ The process for giving notice.
 - ✓ One warning before discharge.
 - ✓ Uniform application.
 - 6 tardies or 5 absences without notice will result in disqualification.
 - Disqualification is a 6X6.
 - 4-year sunset

2. Repeal Food Processing Exclusion

3. Change definition of full-time from 35 hours to 32 hours.

4. Change PEO statute to say PEO and employer negotiate wage.

5. Labor's A&A proposal (9a).

6. \$12/\$14 WBR increase

7. A study regarding tax increases.

Waddell, Lora

From: Frigo, Greg

Sent: Tuesday, October 04, 2005 10:11 AM

To: Waddell, Lora

Could you print this as well.

DISCHARGE FOR FAILING TO NOTIFY THE EMPLOYER. (a) If an employee is discharged for failing to notify the employer of an absenteeism or tardiness that becomes excessive, the employee is ineligible to receive benefits until 6 weeks have elapsed since the end of the week in which the discharge occurs and the employee earns wages after the week in which the discharge occurs equal to at least 6 times the employee's weekly benefit rate under s. 108.05 (1) in employment or other work covered by the unemployment insurance law of any state or the federal government. For purposes of requalification, the employee's weekly benefit rate shall be that rate which would have been paid had the discharge not occurred applicable to the earlier of: (a) the week of disqualification if benefits are claimed for that week; or (b) the first week for which benefits are claimed following the disqualification.

(b) For the purposes of this section, tardiness becomes excessive if the employee is late for six scheduled workdays in a 12-month period without providing adequate notice.

(c) For the purposes of this section, absenteeism becomes excessive if the employee is absent for five scheduled workdays in a 12-month period without providing adequate notice.

(d) The requalifying requirements under (a) only apply if the employer has a written policy on notification of absences or tardiness that includes the following:

1. The written policy shall define what constitutes a single occurrence of absenteeism or tardiness.
2. The written policy shall describe the process for giving adequate notice of an absence or tardiness.
3. The written policy notifies the employee that failure to provide notice of an absence or tardiness may lead to discharge.

The employer shall provide a copy of the written policy to each employee and the employer must have evidence that the employee received the written policy.

The employee must be given at least one warning concerning the employee's violation of the notice requirement before discharge.

The employer must apply the written policy uniformly to all employees.

(e) This section precludes a finding of misconduct under s. 108.04(5) in circumstances that fall within the range of conduct defined in pars. (b) and (c) and does not preclude a finding of misconduct under s. 108.04(5) in circumstances that fall outside the range of conduct defined in pars. (b) and (c).

(f) The department shall charge to the fund's balancing account any benefits otherwise

chargeable to the account of an employer that is subject to the contribution requirements under ss. 108.17 and 108.18 whenever an employee is ineligible for benefits due to excessive tardiness or absenteeism.

-
-
Need to add the section number of the above to:

-
108.16(6m) There shall be charged against the fund's balancing account:

(a) The benefits chargeable under s.

Kuesel, Jeffery

From: Bradley, Brian
Sent: Wednesday, October 05, 2005 10:23 AM
To: Kuesel, Jeffery
Cc: Smith, Thomas E - DWD UI; Frigo, Greg; Tillema, Richard; Reid, Andrea
Subject: Initial Applicability Dates

Jeff: Our initial instructions did not include effective dates for 2 of the electronic reporting law changes. Following are the initial applicability dates each. Let me know if you have any questions.

- The effective date for 108.205 (1m) should be the same as the effective date for 108.17(2g). It should first apply with respect to reports filed for the 2nd quarter beginning after the quarter that includes the effective date of this subsection.
- The effective date for 108.17 (2) (b) should be the same as the dates for 108.205 (2). It should first apply to employers of 75 to 99 employees with respect to reports for the 2nd quarter beginning after the quarter that includes the effective date of this subsection. Also, it should first apply to employers of 50 to 74 employees with respect to reports for the 6th quarter beginning after the quarter that includes the effective date of this subsection.