

State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-4227/6 7

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2009 BILL

SAV

(regenerate)

1 AN ACT ~~to repeal~~ 108.02 (12) (b), 108.02 (18m), 108.02 (25e), 108.04 (2) (d), 108.04  
2 (16) (c), 108.05 (7) (d) 2. b., 108.06 (7) (b) 5., 108.152 (1) (c) and 108.152 (3); **to**  
3 **renumber** 108.02 (12) (bm) 5. and 108.02 (12) (bm) 8. and 9.; **to renumber and**  
4 **amend** 108.02 (12) (bm) 3. and 4., 108.02 (12) (bm) 6. and 7., 108.02 (12) (bm)  
5 10., 108.02 (12) (c) 1., 108.05 (7) (d) 1. b., 108.22 (8) (b) 1. and 108.24 (3); **to**  
6 **consolidate, renumber and amend** 108.05 (7) (d) 1. (intro.) and a. and 108.05  
7 (7) (d) 2. (intro.) and a.; **to amend** 108.02 (12) (a), 108.02 (12) (bm) (intro.),  
8 108.02 (12) (c) (intro.), 108.02 (12) (c) 2., 108.02 (15) (f) 3., 108.02 (15) (f) 6.,  
9 108.02 (15) (g) 1., 108.02 (21e) (intro.), 108.04 (1) (g) (intro.), 108.04 (2) (a)  
10 (intro.), 108.04 (7) (k), 108.04 (7) (o), 108.04 (11) (be) (intro.), 108.04 (16) (b),  
11 108.04 (16) (d), 108.04 (16) (e), 108.05 (3) (b) 1. a., b. and c., 108.06 (7) (a) 2. and  
12 (b) 4., 108.06 (7) (d), 108.06 (7) (h) and (j), 108.09 (2) (bm), 108.09 (4s), 108.10  
13 (4), 108.152 (6) (title), 108.152 (6) (a) (intro.), 108.152 (6) (a) 2., 108.16 (10),  
14 108.18 (7) (a), 108.18 (7) (b), 108.18 (7) (d), 108.18 (7) (h), 108.19 (1m) and 108.20

**BILL**

1 ~~(3); to repeal and recreate 108.02 (12) (bm) 1. and 2. and 108.04 (16) (a); and~~  
 2 ~~to create 108.02 (12) (c) 1. a. to e., 108.02 (15) (k) 21., 108.02 (15s), 108.02 (20m)~~  
 3 ~~108.04 (16) (am), 108.04 (16) (f), 108.05 (3) (e), 108.16 (6) (L) and (m), 108.16~~  
 4 ~~(6m) (g), 108.18 (7) (i), 108.22 (8) (b) 1. c. and d. and 108.24 (3) (a) 4~~ of the  
 5 statutes; **relating to:** various changes in the unemployment insurance law and  
 6 providing a penalty.

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***Analysis by the Legislative Reference Bureau***

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

**BENEFIT CHANGES**

***Approved training and extended training***

Currently, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course or a basic education course that is a prerequisite to such training ("approved training") under certain conditions. Current law also permits a claimant who has exhausted all rights to benefits and is enrolled in an approved training course that meets certain qualifications to potentially qualify to receive up to 26 weeks of additional benefits while enrolled in that training ("extended training"). This bill makes several changes to the provisions governing approved training and extended training. The bill:

1. Provides that a claimant is not subject to certain disqualifications or requalifying requirements that otherwise apply to claimants who leave or refuse certain work after leaving certain temporary work, or after leaving on-the-job training that fails to meet certain federal requirements within 30 days after beginning that training.

2. Prohibits benefit reductions or disqualifications because a claimant is enrolled in certain federally funded training.

3. Broadens the types of training that may be considered approved training (thus precluding benefit denial or reduction during enrollment) to include certain recently created programs administered by the Department of Workforce Development (DWD) and certain training under the federal Workforce Investment Act.

4. Provides that benefits for all claimants who are enrolled in approved training (rather than only certain benefits as currently provided) are not charged to the accounts of individual employers (thus potentially affecting employer contribution (tax) rates) but are instead charged to the unemployment reserve fund's balancing account (a pooled account funded by all employers who pay contributions to the fund).

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5. Eliminates a distinction between claimants who are totally unemployed and claimants who are partially unemployed in applying certain general qualifying requirements, one effect of which is to require DWD to determine whether a claimant is enrolled in approved training before determining whether a claimant meets certain other requirements to receive benefits, thereby enabling more prompt payment of benefits to enrollees.

6. Eliminates a requirement that a claimant must be separated from employment in a declining occupation or involuntarily separated as a result of a permanent reduction in the operations of his or her employer in order to receive extended training benefits.

***Disqualification for full-time work***

Currently, if a claimant receives wages or certain other amounts treated as wages from an employer who paid at least 80 percent of the claimant's wages in his or her base period (period preceding a claim during which benefit rights accrue) for any week, the claimant is not eligible to receive benefits for that week if the claimant works for at least 35 hours for that employer in that week and receives pay at not less than the rate of pay that the claimant received during the calendar quarter in his or her base period in which the claimant received his or her highest wages, or the claimant receives certain other payments from that employer for that week that alone or in combination with any paid wages equal at least the pay the claimant would have received for 35 hours of work.

This bill provides that a claimant is subject to this disqualifier for any week if the claimant receives wages or certain other amounts treated as wages from such an employer for full-time work for that week. The bill defines "full-time work" as work performed for 32 or more hours per week.

***Employee status***

Currently, in order to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee" as defined in the UI law. Generally, an "employee" is an individual who performs services for an employer in employment covered by the UI law, whether or not the individual is paid directly by the employer. However, an individual is not an "employee" if the individual performs services as an independent contractor. Except in the case of a logger or trucker performing services for an employer other than a governmental or nonprofit employer, to be considered an independent contractor, an individual must meet at least seven of ten conditions by contract and in fact concerning the individual's relationship to or direction or control over his or her business or the services that he or she performs.

~~This bill places an individual who is a logger or trucker performing services for an employer other than a governmental or nonprofit employer under the same test for determining employee status as other individuals.~~ The bill ~~also~~ changes the test for determining employee status so that, instead of meeting at least seven of ten specified conditions by contract and in fact, an excluded individual must, by contract and in fact, perform services free from control or direction and must meet at least six of nine specified conditions. Some of the conditions specified in the bill are the same as those currently provided while others are changed from those currently provided.

other than for loggers or truckers as noted above,

**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: a) the work is part-time work consisting of not more than 30 hours per week and the employee is otherwise eligible to receive benefits because of the loss of the employee's full-time work and the loss of the full-time work makes it economically unfeasible to continue his or her part-time work; or b) the employee terminates his or her work in one of two or more concurrently held positions at least one of which consists of more than 30 hours per week, if the employee terminates his or her work before receiving notice of termination from a position which consists of more than 30 hours per week.

This bill changes the above exceptions so that an employee may receive benefits without requalifying if, under a), the work from which the employee terminates is part-time work; or, under b), the work from which the employee terminates is full-time work and the termination occurs prior to receiving notice of termination from full-time work. The bill defines "full-time work" as work consisting of 32 or more hours per week and "part-time work" as work consisting of less than 32 hours per week.

***Benefit reductions due to certain pension payments***

Currently, with certain exceptions and limitations, if a claimant receives a pension, retirement, annuity, or other similar payment based on the previous work of the claimant for a given week, DWD must reduce the claimant's UI benefits otherwise payable for that week, but not below zero, by an amount equal to not more than the amount of the payment received for that week. With certain exceptions, if a payment is actually or constructively received on other than a periodic basis, DWD allocates the payment to specific weeks for purposes of the required reduction using the claimant's most recent full weekly wage rate or another reasonable basis. The actual amount of the reduction depends upon the facts of the particular situation.

This bill provides that when a claimant actually or constructively receives a pension, retirement, annuity, or similar payment based on the previous work of the claimant on other than a periodic basis, DWD must allocate the entire payment to the week in which it is received if DWD provides due notice of the proposed allocation to the claimant before the allocation is made. In most cases, the change reduces the amount of the reduction currently required.

***Treatment of bonus and profit-sharing payments***

Currently, with certain exceptions, if a claimant earns wages in a given week in employment covered by the UI law, the first \$30 of the wages are disregarded and

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the claimant's weekly benefit payment is reduced by 67 percent of the remaining amount of wages earned. Whether a bonus or profit-sharing payment is earned in the same week in which it is paid depends upon the particular facts of a given situation.

This bill provides that for purposes of benefits to which a claimant may be entitled for partial unemployment, a bonus or profit-sharing payment is always considered to be earned in the week in which the bonus or payment is paid by the claimant's employer.

**TAX CHANGES**

***Voluntary contributions after catastrophic loss***

Currently, with certain exceptions and limitations, an employer may make voluntary contribution (tax) payments in any year that may, in some cases, result in a lower contribution rate than would otherwise have applied to the employer in the succeeding year. However, no employer may, by means of a voluntary contribution, reduce the employer's contribution rate to a rate more than one rate lower than the rate that would have applied to the employer in the applicable statutory rate schedule had the voluntary contribution not been made. This bill provides that, notwithstanding this limitation, an employer that suffers physical damage to its business caused by a catastrophic event for which the employer was not primarily responsible, and incurs benefit charges to its UI account for layoffs due to that damage may, by means of a voluntary contribution, increase the employer's reserve percentage (account balance used to compute an employer's contribution rate) to no greater than the reserve percentage that would have applied to the employer had the damage not caused the employer to lay off its employees.

**OTHER CHANGES**

***Coverage of personal care services performed for family members***

Currently, individuals providing personal care or companionship services to ill or disabled individuals are generally covered under the UI law. This bill eliminates coverage for personal care or companionship services performed by an individual for an ill or disabled family member of the individual who directly employs the individual providing the services. Under the bill, "family member" means a spouse, parent, child, grandparent, or grandchild of an individual, by blood or adoption, or an individual's step parent, step child, or domestic partner. Under the bill, ~~an individual who employs a family member to perform these services is no longer subject to a contribution requirement (a requirement to pay taxes) based upon these services, and~~ a claimant is no longer eligible to claim benefits based upon the performance of these services.

***Use of surplus assessment revenues***

Currently, when this state obtains a loan from the federal government to maintain the solvency of the unemployment reserve fund, from which benefits are paid, most employers must pay an assessment to cover the cost of any interest payments due on the loan. If the amounts collected from the assessment are more than is needed to pay the interest due, the amounts are retained in the administrative account of the fund, and may be used for a variety of purposes,

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~~an individual who employs a family member to perform these services is no longer subject to a contribution requirement (a requirement to pay taxes) based upon these services, and~~

but an individual who employs a family member to perform these services remains subject to a contribution requirement

(requirement to pay taxes) based upon the performance of these service

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including administration of the UI program, research relating to the condition of the fund, and the payment of certain benefits.

This bill provides instead that excess revenues shall be credited to the balancing account of the fund, which is used to pay benefits that are not chargeable to any employer's account. The effect is to enhance the balance of the fund, which decreases the need for future borrowing and assessments to maintain the fund's solvency.

***Assurance requirement for Indian tribes***

Currently, Indian tribes and tribal units are covered employers for UI purposes and their employees are potentially eligible to receive UI benefits. If an employee of an Indian tribe or tribal unit files a valid benefit claim, the cost of the benefits is charged to the claimant's employer. In most cases, employers must pay contributions (taxes) to the unemployment insurance fund to finance the cost of benefit payments. These contributions are payable regardless of whether benefits are charged to an employer's account. However, governmental and nonprofit employers and Indian tribes are permitted to reimburse the fund for the cost of benefits charged to their accounts after a claimant claims benefits. Currently, if an Indian tribe elects to finance its benefits on a reimbursement basis, it must provide to DWD assurance of reimbursement such as a surety bond in an amount specified by law. This bill eliminates the requirement to provide assurance of reimbursement. If benefit costs for a claimant are not reimbursed, payments to the claimant are not immediately affected. The cost of benefits is charged to the fund's balancing account or an account into which UI interest and penalty revenues are credited. If a delinquency is not resolved, an Indian tribe's authorization to use reimbursement financing is terminated and DWD may terminate the tribe's coverage under the UI law.

***Unlawful discrimination and retaliation***

Currently, it is unlawful for any person to: a) make a deduction from the wages of an employee to finance an employer's actual or potential UI costs; b) knowingly fail to furnish to an employee any required UI information; c) attempt to induce an employee not to claim UI benefits or to waive any other right under the UI law; or d) maintain a rehiring policy that discriminates against employees who claim benefits. Violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$500 or imprisoned for not more than 90 days or both for each occurrence.

This bill also makes it unlawful to: a) attempt to induce an employee not to claim benefits or waive any right under the UI law by threatening to terminate the employee; b) attempt to induce an employee from participating in a UI audit or investigation, or testifying in a UI hearing, or c) discriminate against an individual because of the individual's participation in a UI audit or investigation, or testifying in a UI hearing or exercising any other right under the UI law. The bill also increases the maximum fine for all current and proposed offenses to \$1,000 for each occurrence.

***Recovery of UI liabilities by offset and setoff***

Currently, if benefits are erroneously paid to an individual, the issue may be adjudicated administratively, subject to appeal through the court system. DWD may then collect the amount of the overpayment set forth in an administrative decision

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by deducting that amount from benefits otherwise payable to the individual. DWD may also levy against the available assets of any individual or employer who is determined to be liable to DWD for UI purposes. Currently, with certain exceptions, moneys withdrawn from the unemployment reserve fund may only be used for the payment of benefits.

This bill permits DWD to utilize procedures available under state and federal revenue laws to set off adjudicated UI liabilities against refunds or other payments that may be payable to a liable individual under state law or to offset adjudicated UI liabilities for fraudulent practices against refunds that may be payable to a liable individual under federal tax laws. The bill also permits DWD to pay the administrative expenses of the federal offsets from the unemployment reserve fund. The change initially applies to satisfaction of liabilities outstanding on the day the bill becomes law.

***Deadline for making voluntary contributions***

Currently, an employer may pay contributions (taxes) before they become due. If an employer makes a voluntary contribution by November 30 of any year, it is credited to the employer's account as of June 30 of that year and it may therefore have the effect of lowering the employer's contribution rate for the succeeding year. Currently, a voluntary contribution is timely if it is received by DWD no later than its due date or, if mailed, is either postmarked by that date or is received by DWD no later than three days after that date.

This bill provides that to be considered timely, a voluntary contribution must be received by DWD no later than its due date.

***Exclusion of certain tribal employment from coverage***

Currently, federal and state law generally provide for UI coverage in employment by Indian tribes. Federal law does not mandate coverage for any of the following types of positions with an Indian tribe: a) members of a legislative body; b) major nontenured policymaking or advisory positions; c) certain part-time policymaking or advisory positions; or d) certain work relief or work training positions.

This bill excludes employment in these positions from coverage under the state UI law unless an employer elects otherwise with DWD's approval. Under the bill, a position as a member of a legislative body is excluded only if the position is elective. Noncoverage means that an employee may not claim benefits based upon this type of employment and the employee's employer is not liable to pay for those benefits.

***Penalty for acts of concealment***

Current law provides that a claimant who conceals any material fact relating to his or her benefit eligibility or who conceals any of his or her wages earned in or paid or payable for a given week must forfeit a specified amount. The penalty increases for subsequent offenses within a specified period. A claimant who conceals wages is also denied benefits for the week in which wages are concealed.

This bill deletes additional language providing that any claimant who commits an act of concealment is disqualified from receiving benefits for an unspecified period.

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**BILL*****Appeals of LIRC decisions***

Current law provides that when an employer wishes to appeal a UI decision made by the Labor and Industry Review Commission (LIRC) to circuit court, LIRC and the adverse party must be named as defendants.

This bill clarifies that in addition to any other parties to any particular appeal DWD is always an adverse party for purposes of UI appeals brought by employers to address issues other than benefit claims and DWD must be named as a defendant. This permits DWD to have notice of the appeal and to participate in the court proceedings and avoids any potential dismissal of an employer's appeal for failure to name DWD as a defendant.

***Qualification of professional employer organizations***

Currently, an employer may transfer its obligations to pay UI contributions or reimbursements to a professional employer organization that meets certain conditions specified by law. Professional employer organizations are separately required to register with the Department of Regulation and Licensing (DRL), pay an annual registration fee, and meet certain financial responsibility requirements.

This bill provides that a professional employer organization does not qualify as such for UI purposes unless it is currently registered with DRL.

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

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

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

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

5           **SECTION 2.** 108.02 (12) (b) of the statutes is repealed.

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

7           108.02 (12) (bm) (intro.) ~~During the period beginning on January 1, 2000, with~~  
8 ~~respect to contribution requirements, and during the period beginning on April 2,~~  
9 ~~2000, with respect to benefit eligibility, par. Paragraph~~ (a) does not apply to an  
10 individual performing services for an employing unit other than a government unit



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1 or nonprofit organization ~~in a capacity other than as a logger or trucker~~, if the  
2 employing unit satisfies the department that the individual meets ~~7 or more of the~~  
3 following conditions specified in subs. 1. and 2., by contract and in fact:

4 **SECTION 4.** 108.02 (12) (bm) 1. and 2. of the statutes are repealed and recreated  
5 to read:

6 108.02 (12) (bm) 1. The services of the individual are performed free from  
7 control or direction by the employing unit over the performance of his or her services.  
8 In determining whether services of an individual are performed free from control or  
9 direction, the department may consider the following nonexclusive factors:

10 a. Whether the individual is required to comply with instructions concerning  
11 how to perform the services.

12 b. Whether the individual receives training from the employing unit with  
13 respect to the services performed.

14 c. Whether the individual is required to personally perform the services.

15 d. Whether the services of the individual are required to be performed at times  
16 or in a particular order or sequence established by the employing unit.

17 e. Whether the individual is required to make oral or written reports to the  
18 employing unit on a regular basis.

19 2. The individual meets 6 or more of the following conditions:

20 a. The individual advertises or otherwise affirmatively holds himself or herself  
21 out as being in business.

22 **SECTION 5.** 108.02 (12) (bm) 3. and 4. of the statutes are renumbered 108.02 (12)  
23 (bm) 2. b. and c. and amended to read:

24 108.02 (12) (bm) 2. b. The individual maintains ~~a separate business with his~~  
25 or her own office, or performs most of the services in a facility or location chosen by

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1 the individual and uses his or her own equipment, or materials and other facilities  
2 in performing the services.

3 c. The individual operates under multiple contracts with one or more  
4 employing units to perform specific services ~~for specific amounts of money and under~~  
5 ~~which the individual controls the means and methods of performing such services.~~

6 **SECTION 6.** 108.02 (12) (bm) 5. of the statutes is renumbered 108.02 (12) (bm)  
7 2. d.

8 **SECTION 7.** 108.02 (12) (bm) 6. and 7. of the statutes are renumbered 108.02 (12)  
9 (bm) 2. e. and f. and amended to read:

10 108.02 (12) (bm) 2. e. The individual is responsible ~~for the satisfactory~~  
11 ~~completion of the services that he or she contracts to perform and is liable for a failure~~  
12 ~~to satisfactorily complete the services~~ obligated to redo unsatisfactory work for no  
13 additional compensation or is subject to a monetary penalty for unsatisfactory work.

14 f. The services performed by the individual receives compensation for services  
15 ~~performed under a contract on a commission or per-job or competitive-bid basis and~~  
16 ~~not on any other basis~~ do not directly relate to the employing unit retaining the  
17 services.

18 **SECTION 8.** 108.02 (12) (bm) 8. and 9. of the statutes are renumbered 108.02 (12)  
19 (bm) 2. g. and h.

20 **SECTION 9.** 108.02 (12) (bm) 10. of the statutes is renumbered 108.02 (12) (bm)  
21 2. i. and amended to read:

22 108.02 (12) (bm) 2. i. ~~The success or failure of the individual's business depends~~  
23 ~~on the relationship of business receipts to expenditures~~ individual is not  
24 economically dependent upon a particular employing unit with respect to the  
25 services being performed.

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

2           108.02 (12) (c) (intro.) Paragraph (a) does not apply to an individual performing  
3           services for a government unit or nonprofit organization, ~~or for any other employing~~  
4           ~~unit in a capacity as a logger or trucker~~ if the employing unit satisfies the department  
5           that the individual meets the conditions specified in subds. 1. and 2.:

6           **SECTION 11.** 108.02 (12) (c) 1. of the statutes is renumbered 108.02 (12) (c) 1.  
7           (intro.) and amended to read:

8           108.02 (12) (c) 1. (intro.) ~~That such~~ The services of the individual has been and  
9           ~~will continue to be~~ are performed free from the employing unit's control or direction  
10          by the employing unit over the performance of his or her services both under his or  
11          her contract and in fact; ~~and.~~ In determining whether services of an individual are  
12          performed free from control or direction, the department may consider the following  
13          nonexclusive factors:

14          **SECTION 12.** 108.02 (12) (c) 1. a. to e. of the statutes are created to read:

15          108.02 (12) (c) 1. a. Whether the individual is required to comply with  
16          instructions concerning how to perform the services.

17          b. Whether the individual receives training from the employing unit with  
18          respect to the services performed.

19          c. Whether the individual is required to personally perform the services.

20          d. Whether the services of the individual are required to be performed at times  
21          or in a particular order or sequence established by the employing unit.

22          e. Whether the individual is required to make oral or written reports to the  
23          employing unit on a regular basis.

24          **SECTION 13.** 108.02 (12) (c) 2. of the statutes is amended to read:

**BILL****SECTION 13**

1           108.02 (12) (c) 2. ~~That such~~ The services have been of the individual are  
2 performed in an independently established trade, business or profession in which the  
3 individual is customarily engaged.

4           **SECTION 14.** 108.02 (15) (f) 3. of the statutes is amended to read:

5           108.02 (15) (f) 3. As a member of a legislative body or the judiciary of a state  
6 or political subdivision, or as a member of an elective legislative body or the judiciary  
7 of an Indian tribe;

8           **SECTION 15.** 108.02 (15) (f) 6. of the statutes is amended to read:

9           108.02 (15) (f) 6. In a position which, under or pursuant to the laws of this state,  
10 or of an Indian tribe, is designated as a major nontenured policymaking or advisory  
11 position, or is designated as a policymaking or advisory position the performance of  
12 the duties of which does not ordinarily require more than 8 hours per week.

13           **SECTION 16.** 108.02 (15) (g) 1. of the statutes is amended to read:

14           108.02 (15) (g) 1. By an individual receiving work relief or work training as part  
15 of an unemployment work-relief or work-training program assisted or financed in  
16 whole or in part by any federal agency or by an agency of a state or political  
17 subdivision thereof or by an Indian tribe, unless otherwise required as a condition  
18 for participation by the unit or organization in such program;

19           **SECTION 17.** 108.02 (15) (k) 21. of the statutes is created to read:

20           108.02 (15) (k) 21. Provided by an individual to an ill or disabled family member  
21 who is the employing unit for such service, if the service is personal care or  
22 companionship. For purposes of this subdivision, "family member" means a spouse,  
23 parent, child, grandparent, or grandchild of an individual, by blood or adoption, or  
24 an individual's step parent, step child, or domestic partner. For purposes of this  
25 subdivision, "domestic partner" has the meaning given in s. 770.01 (1).

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1           **SECTION 18.** 108.02 (15s) of the statutes is created to read:

2           108.02 (15s) FULL-TIME WORK. "Full-time work" means work performed for 32  
3 or more hours per week.

4           ~~SECTION 19. 108.02 (18m) of the statutes is repealed.~~

5           **SECTION 20.** 108.02 (20m) of the statutes is created to read:

6           108.02 (20m) PART-TIME WORK. "Part-time work" means work performed for  
7 less than 32 hours per week.

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

9           108.02 (21e) PROFESSIONAL EMPLOYER ORGANIZATION. (intro.) "Professional  
10 employer organization" means any person who is currently registered as a  
11 professional employer organization with the department of regulation and licensing  
12 in accordance with ch. 461, who contracts to provide the nontemporary, ongoing  
13 employee workforce of more than one client under a written leasing contract, the  
14 majority of whose clients are not under the same ownership, management, or control  
15 as the person other than through the terms of the contract, and who under contract  
16 and in fact:

17           ~~SECTION 22. 108.02 (25e) of the statutes is repealed.~~

18           **SECTION 23.** 108.04 (1) (g) (intro.) of the statutes is amended to read:

19           108.04 (1) (g) (intro.) Except as provided in par. (gm) and s. 108.06 (7) (d), the  
20 base period wages utilized to compute total benefits payable to an individual under  
21 s. 108.06 (1) as a result of the following employment shall not exceed 10 times the  
22 individual's weekly benefit rate based solely on that employment under s. 108.05 (1):

23           **SECTION 24.** 108.04 (2) (a) (intro.) of the statutes is amended to read:

**BILL****SECTION 24**

1           108.04 (2) (a) (intro.) Except as provided in par. (b) and sub. (16) (am) and (b)  
2 and as otherwise expressly provided, a claimant is eligible for benefits as to any given  
3 week for which he or she earns no wages only if:

4           **SECTION 25.** 108.04 (2) (d) of the statutes is repealed.

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

6           108.04 (7) (k) Paragraph (a) does not apply to an employee who terminates his  
7 or her part-time work ~~consisting of not more than 30 hours per week~~ if the employee  
8 is otherwise eligible to receive benefits because of the loss of the employee's full-time  
9 employment and the loss of the full-time employment makes it economically  
10 unfeasible for the employee to continue the part-time work.

11          **SECTION 27.** 108.04 (7) (o) of the statutes is amended to read:

12          108.04 (7) (o) Paragraph (a) does not apply to an employee who terminates his  
13 or her work in one of 2 or more concurrently held positions, at least one of which  
14 ~~consists of more than 30 hours per week~~ is full-time work, if the employee terminates  
15 his or her work before receiving notice of termination from a position which ~~consists~~  
16 ~~of more than 30 hours per week~~ is full-time work.

17          **SECTION 28.** 108.04 (11) (be) (intro.) of the statutes is amended to read:

18          108.04 (11) (be) (intro.) A claimant shall forfeit benefits ~~and be disqualified~~  
19 ~~from receiving benefits~~ for acts of concealment described in pars. (a) and (b) as  
20 follows:

21          **SECTION 29.** 108.04 (16) (a) of the statutes is repealed and recreated to read:

22          108.04 (16) (a) In this subsection, "approved training" means:

23          1. A course of vocational training or basic education which is a prerequisite to  
24 such training in which an individual is enrolled if:

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1 a. The course is expected to increase the individual's opportunities to obtain  
2 employment;

3 b. The course is given by a school established under s. 38.02 or another training  
4 institution approved by the department;

5 c. The individual is enrolled full time as determined by the training institution;

6 d. The course does not grant substantial credit leading to a bachelor's or higher  
7 degree; and

8 e. The individual is attending regularly and making satisfactory progress in  
9 the course.

10 2. A program administered by the department for the training of unemployed  
11 workers, other than the youth apprenticeship program under s. 106.13;

12 3. The plan of any state for training under the federal trade act, 19 USC 2296;  
13 or

14 4. A plan for training approved under the federal workforce investment act, 29  
15 USC 2822.

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

17 108.04 (16) (am) The department shall not apply any benefit reduction or  
18 disqualification under sub. (1) (a), (2) (a), or (8), or s. 108.141 (3g) (a) or (c) to any  
19 otherwise eligible individual for any week as a result of the individual's enrollment  
20 in approved training.

21 **SECTION 31.** 108.04 (16) (b) of the statutes is amended to read:

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

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1 individual is enrolled in ~~a course of training or education that meets the standards~~  
2 ~~specified in par. (a)~~ approved training.

3 **SECTION 32.** 108.04 (16) (c) of the statutes is repealed.

4 **SECTION 33.** 108.04 (16) (d) of the statutes is amended to read:

5 108.04 **(16)** (d) If an individual is enrolled ~~under the plan of any state for~~  
6 ~~training under 19 USC 2296 or a plan for training of dislocated workers approved~~  
7 ~~under 29 USC 2822~~ in approved training specified in par. (a) 3. or 4.:

8 1. The department shall not deny benefits under sub. (7) as a result of the  
9 individual's leaving unsuitable work to enter or continue such training, as a result  
10 of the individual's leaving work that the individual engaged in on a temporary basis  
11 during a break in the training or a delay in the commencement of the training, or  
12 because the individual left on-the-job training not later than 30 days after  
13 commencing that training because the individual did not meet the requirements of  
14 the federal trade act under 19 USC 2296 (c) (1) (B); and

15 2. The requalifying requirements under subs. (7) and (8) do not apply while the  
16 individual is enrolled in ~~such~~ approved training specified in par. (a) 3. or 4.

17 **SECTION 34.** 108.04 (16) (e) of the statutes is amended to read:

18 108.04 **(16)** (e) The department shall charge to the fund's balancing account the  
19 cost of benefits paid to an individual that are otherwise chargeable to the account of  
20 an employer that is subject to the contribution requirements of ss. 108.17 and 108.18  
21 if the individual receives benefits based on the application of par. (am), (b), ~~(e) 2.,~~ or  
22 (d).

23 **SECTION 35.** 108.04 (16) (f) of the statutes is created to read:

24 108.04 **(16)** (f) As a condition to qualification of a course as approved training  
25 for an individual under this subsection, the department may require a certification



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1 from the training institution showing the individual's attendance and progress in the  
2 course.

3 **SECTION 36.** 108.05 (3) (b) 1. a., b. and c. of the statutes are amended to read:

4 108.05 (3) (b) 1. a. The claimant works full time for that employer ~~at least 35~~  
5 ~~hours~~ in that week at the same or a greater rate of pay, excluding bonuses, incentives,  
6 overtime or any other supplement to the earnings, as the claimant was paid by that  
7 employer in that quarter of the claimant's base period in which the claimant was paid  
8 his or her highest wages;

9 b. The claimant receives from that employer sick pay, holiday pay, vacation pay  
10 or termination pay which, by itself or in combination with wages earned for work  
11 performed in that week for that employer, is equivalent to pay for ~~at least 35 hours~~  
12 ~~of full-time~~ work at that same or a greater rate of pay; or

13 c. The amount that the claimant would have earned within that week from that  
14 employer in available work under s. 108.04 (1) (a) which is treated as wages under  
15 s. 108.04 (1) (bm), by itself or in combination with the wages earned for work  
16 performed in that week for that employer and the pay received under subd. 1. b., is  
17 equivalent to pay for ~~at least 35 hours of full-time~~ work at that same or a greater rate  
18 of pay.

19 **SECTION 37.** 108.05 (3) (e) of the statutes is created to read:

20 108.05 (3) (e) For purposes of this subsection, a bonus or profit-sharing  
21 payment is considered to be earned in the week in which the bonus or payment is paid  
22 by the employer. A bonus or profit-sharing payment is considered to be paid on the  
23 date of the check if payment is made by check, on the date of direct deposit by the  
24 employer at a financial institution if payment is deposited by the employer to an

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1 employee's account at a financial institution, or on the date that the bonus or  
2 payment is received by the employee if any other method of payment is used.

3 **SECTION 38.** 108.05 (7) (d) 1. (intro.) and a. of the statutes are consolidated,  
4 renumbered 108.05 (7) (d) 1. and amended to read:

5 108.05 (7) (d) 1. If a pension payment is not paid on a weekly basis, the  
6 department shall allocate and attribute the payment to specific weeks in accordance  
7 with subd. 2. if:—a. The the payment is actually or constructively received on a  
8 periodic basis; or, if a pension payment is actually or constructively received on other  
9 than a periodic basis, the department shall allocate the payment to the week in which  
10 it is received.

11 **SECTION 39.** 108.05 (7) (d) 1. b. of the statutes is renumbered 108.05 (7) (d) 1m.  
12 and amended to read:

13 108.05 (7) (d) 1m. The For purposes of this paragraph, a payment is actually  
14 or constructively received on other than a periodic basis and if it has become  
15 definitely allocated and payable to the claimant by the close of each such a given  
16 week, and the department has provided due notice to the claimant that the payment  
17 will be allocated in accordance with subd. 2.—b. 1.

18 **SECTION 40.** 108.05 (7) (d) 2. (intro.) and a. of the statutes are consolidated,  
19 renumbered 108.05 (7) (d) 2. and amended to read:

20 108.05 (7) (d) 2. The department shall allocate a pension payment as follows:  
21 a. If the payment that is is actually or constructively received on a periodic basis, the  
22 amount allocated by allocating to each week is the fraction of the payment  
23 attributable to that week.

24 **SECTION 41.** 108.05 (7) (d) 2. b. of the statutes is repealed.

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1           **SECTION 42.** 108.06 (7) (a) 2. and (b) 4. of the statutes, as created by 2009  
2 Wisconsin Act 11, are amended to read:

3           108.06 (7) (a) 2. "Training program" means any program of a type specified in  
4 s. 108.04 (16) (a).

5           (b) 4. Is not receiving similar stipends or other training allowances for  
6 nontraining costs; and

7           **SECTION 43.** 108.06 (7) (b) 5. of the statutes, as created by 2009 Wisconsin Act  
8 11, is repealed.

9           **SECTION 44.** 108.06 (7) (d) of the statutes, as created by 2009 Wisconsin Act 11,  
10 is amended to read:

11           108.06 (7) (d) ~~No~~ A claimant may receive total benefits under this subsection  
12 ~~greater than~~ of not more than 26 times the claimant's weekly benefit rate that  
13 applied to the claimant's applicable benefit year while enrolled in a training  
14 program. The benefits authorized under this subsection are in addition to any  
15 regular benefits, extended benefits, or additional benefits authorized under federal  
16 law to which a claimant may be entitled.

17           **SECTION 45.** 108.06 (7) (h) and (j) of the statutes, as created by 2009 Wisconsin  
18 Act 11, are amended to read:

19           108.06 (7) (h) The occupations that qualify as ~~declining~~ or high-demand for  
20 purposes of this subsection shall be determined by the department.

21           (j) The department shall charge benefits paid under this subsection in the same  
22 manner as benefits are charged under s. 108.04 (16) (e).

23           **SECTION 46.** 108.09 (2) (bm) of the statutes is amended to read:

24           108.09 (2) (bm) In determining whether an individual meets the conditions  
25 specified in s. 108.02 (12) ~~(b) 2. a. or b., (bm) 3. or 4.,~~ 2. b. or c. or (c) 1., the department

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1 shall not consider documents granting operating authority or licenses, or any state  
2 or federal laws or federal regulations granting such authority or licenses.

3 **SECTION 47.** 108.09 (4s) of the statutes is amended to read:

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

9 **SECTION 48.** 108.10 (4) of the statutes is amended to read:

10 108.10 (4) The department or the employing unit may commence action for the  
11 judicial review of a commission decision under this section, provided the department,  
12 or the employing unit, after exhausting the remedies provided under this section, has  
13 commenced such action within 30 days after such decision was mailed to the  
14 employing unit's last-known address. The scope of judicial review, and the manner  
15 thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In  
16 an action commenced by an employing unit under this section, the department shall  
17 be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the  
18 complaint commencing the action.

19 **SECTION 49.** 108.152 (1) (c) of the statutes is repealed.

20 **SECTION 50.** 108.152 (3) of the statutes is repealed.

21 **SECTION 51.** 108.152 (6) (title) of the statutes is amended to read:

22 108.152 (6) (title) FAILURE TO MAKE REQUIRED PAYMENTS OR FILE ASSURANCE OF  
23 REIMBURSEMENT.

24 **SECTION 52.** 108.152 (6) (a) (intro.) of the statutes is amended to read:

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1           108.152 (6) (a) (intro.) If an Indian tribe or tribal unit fails to pay required  
2 contributions, reimbursements in lieu of contributions, penalties, interest, or fees  
3 within 90 days of the time that the department transmits to the tribe a final notice  
4 of delinquency, ~~or fails to file or maintain the required assurance of reimbursement~~  
5 ~~as provided in subs. (1) (c) and (3):~~

6           **SECTION 53.** 108.152 (6) (a) 2. of the statutes is amended to read:

7           108.152 (6) (a) 2. Any valid election of reimbursement financing is terminated  
8 as of the end of the current calendar year ~~and any pending election that fails to meet~~  
9 ~~the requirement to file an assurance of reimbursement under sub. (1) (c) is~~  
10 ~~terminated immediately.~~

11           **SECTION 54.** 108.16 (6) (L) and (m) of the statutes are created to read:

12           108.16 (6) (L) The amount of any overpayments that are recovered by the  
13 department by setoff pursuant to s. 71.93 or the amount of any overpayments  
14 resulting from fraud that are recovered by the department by offset pursuant to  
15 section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009, or a  
16 similar federal program.

17           (m) Any amounts collected from assessments levied under s. 108.19 (1m)  
18 exceeding the amounts needed to pay interest due on advances from the federal  
19 unemployment account under title XII of the Social Security Act (42 USC 1321 to  
20 1324).

21           **SECTION 55.** 108.16 (6m) (g) of the statutes is created to read:

22           108.16 (6m) (g) Any payments of fees or expenses assessed by the U.S.  
23 secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code  
24 in effect on June 1, 2009, or a similar federal program.

25           **SECTION 56.** 108.16 (10) of the statutes is amended to read:

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1           108.16 (10) All money withdrawn from the fund shall be used solely in the  
2 payment of benefits, exclusive of expenses of administration, and for refunds of sums  
3 erroneously paid into the fund, for refund of a positive net balance in an employer's  
4 reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the  
5 employer, and for expenditures made pursuant to s. 108.161 and consistently with  
6 the federal limitations applicable to s. 108.161, and for payment of fees and expenses  
7 for collection of overpayments resulting from fraud that are assessed by the U.S.  
8 secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code  
9 in effect on June 1, 2009, or a similar federal program.

10           **SECTION 57.** 108.18 (7) (a) of the statutes is amended to read:

11           108.18 (7) (a) 1. Except as provided in pars. (b) to ~~(h)~~ (i), any employer may  
12 make payments to the fund during the month of November in excess of those required  
13 by this section and s. 108.19 (1) and (1e). Each payment shall be credited to the  
14 employer's account for the purpose of computing the employer's reserve percentage  
15 as of the immediately preceding computation date.

16           2. Each payment shall be treated as a contribution required and irrevocably  
17 paid under this chapter with respect to payrolls preceding the date it is credited  
18 except as a refund or credit is authorized under par. (b), (e) ~~or~~ (h) or (i).

19           **SECTION 58.** 108.18 (7) (b) of the statutes is amended to read:

20           108.18 (7) (b) ~~No~~ Except as provided in par. (i), no employer may, by means of  
21 a voluntary contribution under par. (a), reduce the employer's contribution rate to  
22 a rate lower than the next lower rate which would have applied to the employer for  
23 the following calendar year. Any contributions in excess of the amount required to  
24 reduce an employer's rate to the extent permitted under this paragraph shall be  
25 applied against any outstanding liability of the employer, or if there is no such

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1 liability shall be refunded to the employer or established as a credit, without interest,  
2 against future contributions payable by the employer, at the employer's option.

3 **SECTION 59.** 108.18 (7) (d) of the statutes is amended to read:

4 108.18 (7) (d) A payment under this subsection is timely if it is received by the  
5 department no later than November 30 following the computation date for the  
6 calendar year to which it applies, ~~or if mailed is either postmarked no later than that~~  
7 ~~date or is received by the department no later than 3 days after that date.~~

8 **SECTION 60.** 108.18 (7) (h) of the statutes is amended to read:

9 108.18 (7) (h) The department shall establish contributions other than those  
10 required by this section and s. 108.19 (1) and (1e) and contributions other than those  
11 submitted during the month of November or authorized under par. (f) or (i) 2. as a  
12 credit, without interest, against future contributions payable by the employer or  
13 shall refund the contributions at the employer's option.

14 **SECTION 61.** 108.18 (7) (i) of the statutes is created to read:

15 108.18 (7) (i) 1. An employer that suffers physical damage to its business  
16 caused by a catastrophic event for which the employer is not primarily responsible,  
17 and incurs benefit charges to its account for layoffs due to that damage may, by  
18 means of a voluntary contribution under par. (a), increase the employer's reserve  
19 percentage to no greater than the reserve percentage that would have applied to the  
20 employer as of the next computation date had that damage not caused the employer  
21 to lay off its employees. An employer that makes a voluntary contribution under this  
22 subdivision shall notify the department of its election to have its contribution treated  
23 in the manner provided in this paragraph and shall submit proof, in the form and  
24 manner prescribed by the department, to establish that its employees were laid off  
25 due to the catastrophic event.

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1           2. If an employer makes a payment under subd. 1. after November 30 and  
2 before November 1 of the succeeding year, the department shall establish the  
3 payment as a credit and apply the payment as a voluntary contribution to the  
4 employer's account when the next rate computation occurs. Any amount paid to the  
5 department in excess of the amount that may be applied under subd. 1 in any year  
6 may continue to be held as a credit, without interest, against future required or  
7 voluntary contributions for a calendar year or refunded to the employer, at the  
8 employer's option.

9           **SECTION 62.** 108.19 (1m) of the statutes is amended to read:

10           108.19 (1m) Each employer subject to this chapter as of the date a rate is  
11 established under this subsection shall pay an assessment to the administrative  
12 account at a rate established by the department sufficient to pay interest due on  
13 advances from the federal unemployment account under title XII of the social  
14 security act (42 USC 1321 to 1324). The rate established by the department for  
15 employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall  
16 be 75% of the rate established for other employers. The amount of any employer's  
17 assessment shall be the product of the rate established for that employer multiplied  
18 by the employer's payroll of the previous calendar year as taken from quarterly  
19 employment and wage reports filed by the employer under s. 108.205 (1) or, in the  
20 absence of the filing of such reports, estimates made by the department. Each  
21 assessment made under this subsection is due on the 30th day commencing after the  
22 date on which notice of the assessment is mailed by the department. If the amounts  
23 collected under this subsection are in excess of the amounts needed to pay interest  
24 due, the amounts excess shall be ~~retained in the administrative account and utilized~~  
25 ~~for the purposes specified in s. 108.20 (2m)~~ credited to the balancing account.



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1           **SECTION 63.** 108.20 (3) of the statutes is amended to read:

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

6           **SECTION 64.** 108.22 (8) (b) 1. of the statutes is renumbered 108.22 (8) (b) 1.  
7 (intro.) and amended to read:

8           108.22 (8) (b) 1. (intro.) To recover any overpayment to an individual which is  
9 not otherwise repaid or recovery of which has not been waived, the department may  
10 recoup the amount of the overpayment by:

11           a. Deducting the amount of the overpayment from benefits the individual  
12 would otherwise be eligible to receive, ~~or file;~~

13           b. Filing a warrant against the liable individual in the same manner as is  
14 provided in this section for collecting delinquent payments from employers, ~~or both;~~

15           **SECTION 65.** 108.22 (8) (b) 1. c. and d. of the statutes are created to read:

16           108.22 (8) (b) 1. c. Setting off the amount of the overpayment against a refund  
17 or disbursement due pursuant to s. 71.93; or

18           d. If the overpayment results from fraud, offsetting the amount of the  
19 overpayment against a federal tax refund as provided in section 6402 (f) of the federal  
20 Internal Revenue Code in effect on June 1, 2009, or a similar federal program.

21           **SECTION 66.** 108.24 (3) of the statutes is renumbered 108.24 (3) (a) (intro.) and  
22 amended to read:

23           108.24 (3) (a) (intro.) ~~Any person who makes~~ Whoever does any of the following  
24 shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more  
25 than 90 days or both:

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1           1. Makes a deduction from the wages of an employee because of liability for  
2 contributions or payments in lieu of contributions under this chapter or because of  
3 the employee's potential right to benefits, ~~or who knowingly,~~

4           2. Knowingly refuses or fails to furnish to an employee any notice, report or  
5 information duly required under this chapter by the department to be furnished to  
6 such employee, ~~or who, directly,~~

7           3. Directly or indirectly, by promise of reemployment or by threat not to employ,  
8 to terminate, or not to reemploy or by any other means, attempts to induce an  
9 employee to refrain:

10           a. Refrain from claiming or accepting benefits ~~or to waive, participating in an~~  
11 audit or investigation by the department, or testifying in a hearing held under s,  
12 108.09 or 108.10.

13           b. Waive any other right under this chapter, ~~or whose rehiring policy has~~  
14 ~~discriminated against a former employee by reason of their having claimed benefits,~~  
15 ~~shall be fined not less than \$100 nor more than \$500 or imprisoned not more than~~  
16 ~~90 days, or both; and each such deduction from wages, every day of such refusal or~~  
17 ~~failure, and each such attempt to induce,~~

18           (b) Each violation of this subsection constitutes a separate offense.

19           **SECTION 67.** 108.24 (3) (a) 4. of the statutes is created to read:

20           108.24 (3) (a) 4. Discriminates or retaliates against an individual because the  
21 individual claims benefits, participates in an audit or investigation by the  
22 department under this chapter, testifies in a hearing under s. 108.09 or 108.10, or  
23 exercises any other right under this chapter.

24           **SECTION 68. Nonstatutory provisions.**

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1 (1) CERTAIN BENEFIT PAYMENTS VALIDATED. Notwithstanding section 108.04 (16),  
2 2007 stats., if any unemployment insurance claimant who was enrolled in training  
3 approved under the federal workforce investment act, 29 USC 2822, received  
4 benefits concurrently with that enrollment during the period beginning on or after  
5 August 23, 2009, and ending on the day before the time that the treatment of section  
6 108.04 (16) of the statutes by this act initially applies, and the claimant was  
7 otherwise eligible to receive the benefits, the payment of benefits to the claimant is  
8 valid if the claimant would have qualified to receive the benefits under section 108.04  
9 (16) of the statutes, as affected by this act.

10 (2) ADMINISTRATIVE ACCOUNT TRANSFER. Within 30 days after the effective date  
11 of this subsection, the treasurer of the unemployment reserve fund shall transfer  
12 from the administrative account of the fund to the balancing account of the fund any  
13 amount of money in the administrative account as of the date of the transfer that is  
14 derived from assessments for interest payments made under section 108.19 (1m) of  
15 the statutes and is in excess of the amount needed to make those payments.

**SECTION 69. Initial applicability.**

17 (1) The treatment of sections 108.02 (12) (bm) (intro.) and 1. to 10. and (c)  
18 (intro.) and 2. (~~18m~~), and (~~25e~~) and 108.09 (2) (bm) and (4s) of the statutes, the  
19 <sup>period stays</sup> renumbering and amendment of section 108.02 (12) (c) 1. of the statutes, and the  
20 creation of section 108.02 (12) (c) 1. a. to e. of the statutes, with respect to contribution  
21 requirements, first apply with respect to services performed after December 31,  
22 2010.

23 (2) The treatment of sections 108.02 (12) (bm) (intro.) and 1. to 10. and (c)  
24 (intro.) and 2. (~~18m~~), and (~~25e~~) and 108.09 (2) (bm) and (4s) of the statutes, the  
25 <sup>period stays</sup> renumbering and amendment of section 108.02 (12) (c) 1. of the statutes, and the

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1 creation of section 108.02 (12) (c) 1. a. to e. of the statutes, with respect to benefit  
 2 eligibility, first apply with respect to ~~base period wages received or treated as being~~ *services performed after December 31,*  
 3 ~~received beginning on January 1, 2011.~~ *19.b., 20.b., and 2010*

4 (3) The treatment of section 108.02 (15) (k) 21. of the statutes, with respect to  
 5 contribution requirements, first applies with respect to services performed ~~in weeks~~ *after*  
 6 ~~of unemployment beginning on January 2, 2011.~~ *December 31, 2010*  
 7 *19.b., 20.b., and*

8 (4) The treatment of section 108.02 (15) (k) 21. of the statutes, with respect to  
 9 benefit eligibility, first applies with respect to benefit years beginning on January 2,  
 10 2011.

11 (5) The treatment of sections 108.02 (15s) and (20m) (with respect to  
 12 terminations of employment) and 108.04 (7) (k) and (o) of the statutes first applies  
 13 with respect to voluntary terminations of employment occurring on the effective date  
 14 of this subsection.

15 (6) The treatment of sections 108.02 (15s) and (20m) (with respect to benefits  
 16 for partial unemployment) and 108.05 (3) (b) 1. a., b., and c. of the statutes first  
 17 applies with respect to weeks of unemployment beginning on ~~the effective date of this~~  
 18 ~~subsection.~~ *July 3, 2011*

19 (7) The treatment of section 108.02 (21e) (intro.) of the statutes (with respect  
 20 to liability for contributions and reimbursements) first applies with respect to  
 21 determinations issued under section 108.10 of the statutes beginning with the first  
 22 quarter beginning after the effective date of this subsection.

23 (8) The treatment of sections 108.04 (1) (g) (intro.), (2) (a) (intro.) and (d), and  
 24 (16) (a), (am), (b), (c), (d), and (f) and 108.06 (7) (a) 2., (b) 4. and 5., (d), (h), and (j) of  
 25 the statutes (with respect to benefit payments) first applies with respect to weeks of  
 unemployment beginning on the effective date of this subsection.

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1 (9) The treatment of section 108.04 (16) (e) of the statutes first applies with  
2 respect to weeks of unemployment beginning on October 3, 2010.

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

5 (11) The treatment of section 108.05 (7) (d) 1. (intro.), a., and b. and 2. (intro.),  
6 a., and b. of the statutes first applies with respect to pension payments that are  
7 received on other than a periodic basis in weeks of unemployment beginning on or  
8 after the effective date of this subsection.

9 (12) The treatment of section 108.152 (1) (c), (3), and (6) (title) and (a) (intro.)  
10 and 2. of the statutes first applies with respect to Indian tribes and tribal units  
11 electing or continuing reimbursement financing of benefits for calendar years  
12 beginning after December 31, 2010.

13 (13) The treatment of section 108.16 (6) (L) and (m), (6m) (g), and (10) of the  
14 statutes, the renumbering and amendment of section 108.22 (8) (b) 1. of the statutes,  
15 and the creation of section 108.22 (8) (b) 1. c. and d. of the statutes first apply with  
16 respect to satisfaction of liabilities outstanding on the effective date of this  
17 subsection.

Ⓢ (1)

~~except as~~

18 **SECTION 70. Effective dates.** This act takes effect on July 4, 2010

19 follows:

~~(1) SECTION 69 (6) takes effect on July 3, 2011.~~

(END)

18  
19  
20  
21

Fix  
COMPONENTS

~~INS 12-18~~

**BILL**

~~1 108.02 (15) (g) 1. By an individual receiving work relief or work training as part  
2 of an unemployment work-relief or work-training program assisted or financed in  
3 whole or in part by any federal agency or by an agency of a state or political  
4 subdivision thereof or by an Indian tribe, unless otherwise required as a condition  
5 for participation by the unit or organization in such program;~~

6 ~~SECTION 19.~~ 108.02 (15) (k) 19. b. of the statutes is amended to read:

7 108.02 (15) (k) 19. b. The individual has been paid or is treated as having been  
8 paid wages or other remuneration of \$500 or more during his or her base period for  
9 services performed for at least one employer other than the seasonal employer that  
10 is subject to the unemployment insurance law of any state or the federal government;

11 or

12 ~~SECTION 20.~~ 108.02 (15) (k) 20. b. of the statutes is amended to read:

13 108.02 (15) (k) 20. b. Respiratory care service for ventilator-dependent  
14 individuals authorized under s. 49.46 (2) (b) 6. m., for which medical assistance  
15 reimbursement is available as a covered service, provided by an individual who is  
16 certified by the department of health services under s. 49.45 (2) (a) 11. as a provider  
17 of respiratory care services in independent practice; or

18 ~~SECTION 21.~~ 108.02 (15) (k) 21. of the statutes is created to read:

19 108.02 (15) (k) 21. Provided by an individual to an ill or disabled family member  
20 who is the employing unit for such service, if the service is personal care or  
21 companionship. For purposes of this subdivision, "family member" means a spouse,  
22 parent, child, grandparent, or grandchild of an individual, by blood or adoption, or  
23 an individual's step parent, step child, or domestic partner. For purposes of this  
24 subdivision, "domestic partner" has the meaning given in s. 770.01 (1).

25 ~~SECTION 22.~~ 108.02 (15s) of the statutes is created to read:

**Kuesel, Jeffery**

---

**From:** Schwalbe, Tracey L - DWD [Tracey.Schwalbe@dwd.wisconsin.gov]  
**Sent:** Tuesday, March 16, 2010 3:03 PM  
**To:** Kuesel, Jeffery  
**Cc:** LaRocque, Daniel J - DWD  
**Subject:** UI Bill LRB 42277

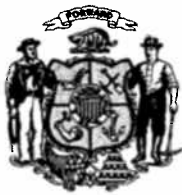
Hi Jeff,

The language for the bill in draft 7 looks good. We spotted a correction to note to the Analysis section on "voluntary termination of work." On page 4, in the last paragraph of that section, we think the reference to "b)" should read: "b), the employee terminates work and the termination occurs prior to receiving notice of termination from full-time work." For this quit exception, the work the employee terminates does not need to be full-time work.

I understand that Hal intends to share this draft with Council members. I think the change to the analysis noted above can be made when we know if there will need to be any other changes to the bill after the Council reviews it. If any issues come up with the Council, I will let you know. Thanks for all of your work on this!  
Tracey

*in one position*

*another position that is*



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-4227/8

JTK:cjs:rs

Stays

Wed 3/17 - AM

2009 BILL

see p. 4  
no change to text

Reyer Cat

SA ✓

1 AN ACT *to repeal* 108.02 (12) (b), 108.04 (2) (d), 108.04 (16) (c), 108.05 (7) (d) 2.  
2 b., 108.06 (7) (b) 5., 108.152 (1) (c) and 108.152 (3); *to renumber* 108.02 (12)  
3 (bm) 5. and 108.02 (12) (bm) 8. and 9.; *to renumber and amend* 108.02 (12)  
4 (bm) 3. and 4., 108.02 (12) (bm) 6. and 7., 108.02 (12) (bm) 10., 108.02 (12) (c)  
5 1., 108.05 (7) (d) 1. b., 108.22 (8) (b) 1. and 108.24 (3); *to consolidate,*  
6 *renumber and amend* 108.05 (7) (d) 1. (intro.) and a. and 108.05 (7) (d) 2.  
7 (intro.) and a.; *to amend* 108.02 (12) (a), 108.02 (12) (bm) (intro.), 108.02 (12)  
8 (c) (intro.), 108.02 (12) (c) 2., 108.02 (15) (f) 3., 108.02 (15) (f) 6., 108.02 (15) (g)  
9 1., 108.02 (15) (k) 19. b., 108.02 (15) (k) 20. b., 108.02 (21e) (intro.), 108.04 (1)  
10 (g) (intro.), 108.04 (2) (a) (intro.), 108.04 (7) (k), 108.04 (7) (o), 108.04 (11) (be)  
11 (intro.), 108.04 (16) (b), 108.04 (16) (d), 108.04 (16) (e), 108.05 (3) (b) 1. a., b. and  
12 c., 108.06 (7) (a) 2. and (b) 4., 108.06 (7) (d), 108.06 (7) (h) and (j), 108.09 (2) (bm),  
13 108.09 (4s), 108.10 (4), 108.152 (6) (title), 108.152 (6) (a) (intro.), 108.152 (6) (a)  
14 2., 108.16 (10), 108.18 (7) (a), 108.18 (7) (b), 108.18 (7) (d), 108.18 (7) (h), 108.19



**BILL**

1 (1m) and 108.20 (3); **to repeal and recreate** 108.02 (12) (bm) 1. and 2. and  
2 108.04 (16) (a); and **to create** 108.02 (12) (c) 1. a. to e., 108.02 (15) (k) 21., 108.02  
3 (15s), 108.02 (20m), 108.04 (16) (am), 108.04 (16) (f), 108.05 (3) (e), 108.16 (6)  
4 (L) and (m), 108.16 (6m) (g), 108.18 (7) (i), 108.22 (8) (b) 1. c. and d. and 108.24  
5 (3) (a) 4. of the statutes; **relating to:** various changes in the unemployment  
6 insurance law and providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

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

**BENEFIT CHANGES*****Approved training and extended training***

Currently, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course or a basic education course that is a prerequisite to such training (“approved training”) under certain conditions. Current law also permits a claimant who has exhausted all rights to benefits and is enrolled in an approved training course that meets certain qualifications to potentially qualify to receive up to 26 weeks of additional benefits while enrolled in that training (“extended training”). This bill makes several changes to the provisions governing approved training and extended training. The bill:

1. Provides that a claimant is not subject to certain disqualifications or requalifying requirements that otherwise apply to claimants who leave or refuse certain work after leaving certain temporary work, or after leaving on-the-job training that fails to meet certain federal requirements within 30 days after beginning that training.

2. Prohibits benefit reductions or disqualifications because a claimant is enrolled in certain federally funded training.

3. Broadens the types of training that may be considered approved training (thus precluding benefit denial or reduction during enrollment) to include certain recently created programs administered by the Department of Workforce Development (DWD) and certain training under the federal Workforce Investment Act.

4. Provides that benefits for all claimants who are enrolled in approved training (rather than only certain benefits as currently provided) are not charged to the accounts of individual employers (thus potentially affecting employer contribution (tax) rates) but are instead charged to the unemployment reserve fund’s balancing account (a pooled account funded by all employers who pay contributions to the fund).

**BILL**

5. Eliminates a distinction between claimants who are totally unemployed and claimants who are partially unemployed in applying certain general qualifying requirements, one effect of which is to require DWD to determine whether a claimant is enrolled in approved training before determining whether a claimant meets certain other requirements to receive benefits, thereby enabling more prompt payment of benefits to enrollees.

6. Eliminates a requirement that a claimant must be separated from employment in a declining occupation or involuntarily separated as a result of a permanent reduction in the operations of his or her employer in order to receive extended training benefits.

***Disqualification for full-time work***

Currently, if a claimant receives wages or certain other amounts treated as wages from an employer who paid at least 80 percent of the claimant's wages in his or her base period (period preceding a claim during which benefit rights accrue) for any week, the claimant is not eligible to receive benefits for that week if the claimant works for at least 35 hours for that employer in that week and receives pay at not less than the rate of pay that the claimant received during the calendar quarter in his or her base period in which the claimant received his or her highest wages, or the claimant receives certain other payments from that employer for that week that alone or in combination with any paid wages equal at least the pay the claimant would have received for 35 hours of work.

This bill provides that a claimant is subject to this disqualifier for any week if the claimant receives wages or certain other amounts treated as wages from such an employer for full-time work for that week. The bill defines "full-time work" as work performed for 32 or more hours per week.

***Employee status***

Currently, in order to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee" as defined in the UI law. Generally, an "employee" is an individual who performs services for an employer in employment covered by the UI law, whether or not the individual is paid directly by the employer. However, an individual is not an "employee" if the individual performs services as an independent contractor. Except in the case of a logger or trucker performing services for an employer other than a governmental or nonprofit employer, to be considered an independent contractor, an individual must meet at least seven of ten conditions by contract and in fact concerning the individual's relationship to or direction or control over his or her business or the services that he or she performs.

The bill changes the test for determining employee status, other than for loggers or truckers as noted above, so that, instead of meeting at least seven of ten specified conditions by contract and in fact, an excluded individual must, by contract and in fact, perform services free from control or direction and must meet at least six of nine specified conditions. Some of the conditions specified in the bill are the same as those currently provided while others are changed from those currently provided.

***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

**BILL**

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: a) the work is part-time work consisting of not more than 30 hours per week and the employee is otherwise eligible to receive benefits because of the loss of the employee's full-time work and the loss of the full-time work makes it economically unfeasible to continue his or her part-time work; or b) the employee terminates his or her work in one of two or more concurrently held positions at least one of which consists of more than 30 hours per week, if the employee terminates his or her work before receiving notice of termination from a position which consists of more than 30 hours per week.

work in one position

This bill changes the above exceptions so that an employee may receive benefits without requalifying if, under a), the work from which the employee terminates is part-time work; or, under b), the ~~work from which the~~ employee terminates ~~is~~ ~~full-time work~~ and the termination occurs prior to receiving notice of termination from full-time work. The bill defines "full-time work" as work consisting of 32 or more hours per week and "part-time work" as work consisting of less than 32 hours per week.

another position that is

***Benefit reductions due to certain pension payments***

Currently, with certain exceptions and limitations, if a claimant receives a pension, retirement, annuity, or other similar payment based on the previous work of the claimant for a given week, DWD must reduce the claimant's UI benefits otherwise payable for that week, but not below zero, by an amount equal to not more than the amount of the payment received for that week. With certain exceptions, if a payment is actually or constructively received on other than a periodic basis, DWD allocates the payment to specific weeks for purposes of the required reduction using the claimant's most recent full weekly wage rate or another reasonable basis. The actual amount of the reduction depends upon the facts of the particular situation.

This bill provides that when a claimant actually or constructively receives a pension, retirement, annuity, or similar payment based on the previous work of the claimant on other than a periodic basis, DWD must allocate the entire payment to the week in which it is received if DWD provides due notice of the proposed allocation to the claimant before the allocation is made. In most cases, the change reduces the amount of the reduction currently required.

***Treatment of bonus and profit-sharing payments***

Currently, with certain exceptions, if a claimant earns wages in a given week in employment covered by the UI 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. Whether a bonus or profit-sharing payment is earned in

**BILL**

the same week in which it is paid depends upon the particular facts of a given situation.

This bill provides that for purposes of benefits to which a claimant may be entitled for partial unemployment, a bonus or profit-sharing payment is always considered to be earned in the week in which the bonus or payment is paid by the claimant's employer.

**TAX CHANGES*****Voluntary contributions after catastrophic loss***

Currently, with certain exceptions and limitations, an employer may make voluntary contribution (tax) payments in any year that may, in some cases, result in a lower contribution rate than would otherwise have applied to the employer in the succeeding year. However, no employer may, by means of a voluntary contribution, reduce the employer's contribution rate to a rate more than one rate lower than the rate that would have applied to the employer in the applicable statutory rate schedule had the voluntary contribution not been made. This bill provides that, notwithstanding this limitation, an employer that suffers physical damage to its business caused by a catastrophic event for which the employer was not primarily responsible, and incurs benefit charges to its UI account for layoffs due to that damage may, by means of a voluntary contribution, increase the employer's reserve percentage (account balance used to compute an employer's contribution rate) to no greater than the reserve percentage that would have applied to the employer had the damage not caused the employer to lay off its employees.

***Deadline for making voluntary contributions***

Currently, an employer may pay contributions (taxes) before they become due. If an employer makes a voluntary contribution by November 30 of any year, it is credited to the employer's account as of June 30 of that year and it may therefore have the effect of lowering the employer's contribution rate for the succeeding year. Currently, a voluntary contribution is timely if it is received by DWD no later than its due date or, if mailed, is either postmarked by that date or is received by DWD no later than three days after that date.

This bill provides that to be considered timely, a voluntary contribution must be received by DWD no later than its due date.

**OTHER CHANGES*****Coverage of personal care services performed for family members***

Currently, individuals providing personal care or companionship services to ill or disabled individuals are generally covered under the UI law. This bill eliminates coverage for personal care or companionship services performed by an individual for an ill or disabled family member of the individual who directly employs the individual providing the services. Under the bill, "family member" means a spouse, parent, child, grandparent, or grandchild of an individual, by blood or adoption, or an individual's step parent, step child, or domestic partner. Under the bill, a claimant is no longer eligible to claim benefits based upon the performance of these services but an individual who employs a family member to perform these services

**BILL**

remains subject to a contribution requirement (requirement to pay taxes) based upon the performance of these services.

***Use of surplus assessment revenues***

Currently, when this state obtains a loan from the federal government to maintain the solvency of the unemployment reserve fund, from which benefits are paid, most employers must pay an assessment to cover the cost of any interest payments due on the loan. If the amounts collected from the assessment are more than is needed to pay the interest due, the amounts are retained in the administrative account of the fund, and may be used for a variety of purposes, including administration of the UI program, research relating to the condition of the fund, and the payment of certain benefits.

This bill provides instead that excess revenues shall be credited to the balancing account of the fund, which is used to pay benefits that are not chargeable to any employer's account. The effect is to enhance the balance of the fund, which decreases the need for future borrowing and assessments to maintain the fund's solvency.

***Assurance requirement for Indian tribes***

Currently, Indian tribes and tribal units are covered employers for UI purposes and their employees are potentially eligible to receive UI benefits. If an employee of an Indian tribe or tribal unit files a valid benefit claim, the cost of the benefits is charged to the claimant's employer. In most cases, employers must pay contributions (taxes) to the unemployment insurance fund to finance the cost of benefit payments. These contributions are payable regardless of whether benefits are charged to an employer's account. However, governmental and nonprofit employers and Indian tribes are permitted to reimburse the fund for the cost of benefits charged to their accounts after a claimant claims benefits. Currently, if an Indian tribe elects to finance its benefits on a reimbursement basis, it must provide to DWD assurance of reimbursement such as a surety bond in an amount specified by law. This bill eliminates the requirement to provide assurance of reimbursement. If benefit costs for a claimant are not reimbursed, payments to the claimant are not immediately affected. The cost of benefits is charged to the fund's balancing account or an account into which UI interest and penalty revenues are credited. If a delinquency is not resolved, an Indian tribe's authorization to use reimbursement financing is terminated and DWD may terminate the tribe's coverage under the UI law.

***Unlawful discrimination and retaliation***

Currently, it is unlawful for any person to: a) make a deduction from the wages of an employee to finance an employer's actual or potential UI costs; b) knowingly fail to furnish to an employee any required UI information; c) attempt to induce an employee not to claim UI benefits or to waive any other right under the UI law; or d) maintain a rehiring policy that discriminates against employees who claim benefits. Violators are guilty of a misdemeanor and are subject to a fine of not less than \$100 nor more than \$500 or imprisoned for not more than 90 days or both for each occurrence.

This bill also makes it unlawful to: a) attempt to induce an employee not to claim benefits or waive any right under the UI law by threatening to terminate the

**BILL**

employee; b) attempt to induce an employee from participating in a UI audit or investigation, or testifying in a UI hearing, or c) discriminate against an individual because of the individual's participation in a UI audit or investigation, or testifying in a UI hearing or exercising any other right under the UI law. The bill also increases the maximum fine for all current and proposed offenses to \$1,000 for each occurrence.

***Recovery of UI liabilities by offset and setoff***

Currently, if benefits are erroneously paid to an individual, the issue may be adjudicated administratively, subject to appeal through the court system. DWD may then collect the amount of the overpayment set forth in an administrative decision by deducting that amount from benefits otherwise payable to the individual. DWD may also levy against the available assets of any individual or employer who is determined to be liable to DWD for UI purposes. Currently, with certain exceptions, moneys withdrawn from the unemployment reserve fund may only be used for the payment of benefits.

This bill permits DWD to utilize procedures available under state and federal revenue laws to set off adjudicated UI liabilities against refunds or other payments that may be payable to a liable individual under state law or to offset adjudicated UI liabilities for fraudulent practices against refunds that may be payable to a liable individual under federal tax laws. The bill also permits DWD to pay the administrative expenses of the federal offsets from the unemployment reserve fund. The change initially applies to satisfaction of liabilities outstanding on the day the bill becomes law.

***Exclusion of certain tribal employment from coverage***

Currently, federal and state law generally provide for UI coverage in employment by Indian tribes. Federal law does not mandate coverage for any of the following types of positions with an Indian tribe: a) members of a legislative body; b) major nontenured policymaking or advisory positions; c) certain part-time policymaking or advisory positions; or d) certain work relief or work training positions.

This bill excludes employment in these positions from coverage under the state UI law unless an employer elects otherwise with DWD's approval. Under the bill, a position as a member of a legislative body is excluded only if the position is elective. Noncoverage means that an employee may not claim benefits based upon this type of employment and the employee's employer is not liable to pay for those benefits.

***Penalty for acts of concealment***

Current law provides that a claimant who conceals any material fact relating to his or her benefit eligibility or who conceals any of his or her wages earned in or paid or payable for a given week must forfeit a specified amount. The penalty increases for subsequent offenses within a specified period. A claimant who conceals wages is also denied benefits for the week in which wages are concealed.

This bill deletes additional language providing that any claimant who commits an act of concealment is disqualified from receiving benefits for an unspecified period.

**BILL*****Appeals of LIRC decisions***

Current law provides that when an employer wishes to appeal a UI decision made by the Labor and Industry Review Commission (LIRC) to circuit court, LIRC and the adverse party must be named as defendants.

This bill clarifies that in addition to any other parties to any particular appeal DWD is always an adverse party for purposes of UI appeals brought by employers to address issues other than benefit claims and DWD must be named as a defendant. This permits DWD to have notice of the appeal and to participate in the court proceedings and avoids any potential dismissal of an employer's appeal for failure to name DWD as a defendant.

***Qualification of professional employer organizations***

Currently, an employer may transfer its obligations to pay UI contributions or reimbursements to a professional employer organization that meets certain conditions specified by law. Professional employer organizations are separately required to register with the Department of Regulation and Licensing (DRL), pay an annual registration fee, and meet certain financial responsibility requirements.

This bill provides that a professional employer organization does not qualify as such for UI purposes unless it is currently registered with DRL.

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

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

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

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

5           **SECTION 2.** 108.02 (12) (b) of the statutes is repealed.

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

7           108.02 (12) (bm) (intro.) ~~During the period beginning on January 1, 2000, with~~  
8 ~~respect to contribution requirements, and during the period beginning on April 2,~~  
9 ~~2000, with respect to benefit eligibility, par. Paragraph (a) does not apply to an~~  
10 individual performing services for an employing unit other than a government unit

**BILL**

1 or nonprofit organization in a capacity other than as a logger or trucker, if the  
2 employing unit satisfies the department that the individual meets ~~7 or more of the~~  
3 following conditions specified in subds. 1. and 2., by contract and in fact:

4 **SECTION 4.** 108.02 (12) (bm) 1. and 2. of the statutes are repealed and recreated  
5 to read:

6 108.02 (12) (bm) 1. The services of the individual are performed free from  
7 control or direction by the employing unit over the performance of his or her services.  
8 In determining whether services of an individual are performed free from control or  
9 direction, the department may consider the following nonexclusive factors:

10 a. Whether the individual is required to comply with instructions concerning  
11 how to perform the services.

12 b. Whether the individual receives training from the employing unit with  
13 respect to the services performed.

14 c. Whether the individual is required to personally perform the services.

15 d. Whether the services of the individual are required to be performed at times  
16 or in a particular order or sequence established by the employing unit.

17 e. Whether the individual is required to make oral or written reports to the  
18 employing unit on a regular basis.

19 2. The individual meets 6 or more of the following conditions:

20 a. The individual advertises or otherwise affirmatively holds himself or herself  
21 out as being in business.

22 **SECTION 5.** 108.02 (12) (bm) 3. and 4. of the statutes are renumbered 108.02 (12)  
23 (bm) 2. b. and c. and amended to read:

24 108.02 (12) (bm) 2. b. The individual maintains ~~a separate business with his~~  
25 or her own office, or performs most of the services in a facility or location chosen by



**BILL****SECTION 5**

1 the individual and uses his or her own equipment, or materials and other facilities  
2 in performing the services.

3 c. The individual operates under multiple contracts with one or more  
4 employing units to perform specific services ~~for specific amounts of money and under~~  
5 ~~which the individual controls the means and methods of performing such services.~~

6 **SECTION 6.** 108.02 (12) (bm) 5. of the statutes is renumbered 108.02 (12) (bm)  
7 2. d.

8 **SECTION 7.** 108.02 (12) (bm) 6. and 7. of the statutes are renumbered 108.02 (12)  
9 (bm) 2. e. and f. and amended to read:

10 108.02 (12) (bm) 2. e. The individual is ~~responsible for the satisfactory~~  
11 ~~completion of the services that he or she contracts to perform and is liable for a failure~~  
12 ~~to satisfactorily complete the services~~ obligated to redo unsatisfactory work for no  
13 additional compensation or is subject to a monetary penalty for unsatisfactory work.

14 f. The services performed by the individual receives compensation for services  
15 ~~performed under a contract on a commission or per-job or competitive-bid basis and~~  
16 ~~not on any other basis~~ do not directly relate to the employing unit retaining the  
17 services.

18 **SECTION 8.** 108.02 (12) (bm) 8. and 9. of the statutes are renumbered 108.02 (12)  
19 (bm) 2. g. and h.

20 **SECTION 9.** 108.02 (12) (bm) 10. of the statutes is renumbered 108.02 (12) (bm)  
21 2. i. and amended to read:

22 108.02 (12) (bm) 2. i. The ~~success or failure of the individual's business depends~~  
23 ~~on the relationship of business receipts to expenditures~~ individual is not  
24 economically dependent upon a particular employing unit with respect to the  
25 services being performed.

**BILL**

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

2           108.02 (12) (c) (intro.) Paragraph (a) does not apply to an individual performing  
3 services for a government unit or nonprofit organization, or for any other employing  
4 unit in a capacity as a logger or trucker if the employing unit satisfies the department  
5 that the individual meets the conditions specified in subds. 1. and 2.:

6           **SECTION 11.** 108.02 (12) (c) 1. of the statutes is renumbered 108.02 (12) (c) 1.  
7 (intro.) and amended to read:

8           108.02 (12) (c) 1. (intro.) ~~That such~~ The services of the individual has been and  
9 ~~will continue to be~~ are performed free from the employing unit's control or direction  
10 by the employing unit over the performance of his or her services both under his or  
11 her contract and in fact; ~~and.~~ In determining whether services of an individual are  
12 performed free from control or direction, the department may consider the following  
13 nonexclusive factors:

14           **SECTION 12.** 108.02 (12) (c) 1. a. to e. of the statutes are created to read:

15           108.02 (12) (c) 1. a. Whether the individual is required to comply with  
16 instructions concerning how to perform the services.

17           b. Whether the individual receives training from the employing unit with  
18 respect to the services performed.

19           c. Whether the individual is required to personally perform the services.

20           d. Whether the services of the individual are required to be performed at times  
21 or in a particular order or sequence established by the employing unit.

22           e. Whether the individual is required to make oral or written reports to the  
23 employing unit on a regular basis.

24           **SECTION 13.** 108.02 (12) (c) 2. of the statutes is amended to read:

**BILL****SECTION 13**

1           108.02 (12) (c) 2. ~~That such~~ The services have been of the individual are  
2 performed in an independently established trade, business or profession in which the  
3 individual is customarily engaged.

4           **SECTION 14.** 108.02 (15) (f) 3. of the statutes is amended to read:

5           108.02 (15) (f) 3. As a member of a legislative body or the judiciary of a state  
6 or political subdivision, or as a member of an elective legislative body or the judiciary  
7 of an Indian tribe;

8           **SECTION 15.** 108.02 (15) (f) 6. of the statutes is amended to read:

9           108.02 (15) (f) 6. In a position which, under or pursuant to the laws of this state,  
10 or of an Indian tribe, is designated as a major nontenured policymaking or advisory  
11 position, or is designated as a policymaking or advisory position the performance of  
12 the duties of which does not ordinarily require more than 8 hours per week.

13           **SECTION 16.** 108.02 (15) (g) 1. of the statutes is amended to read:

14           108.02 (15) (g) 1. By an individual receiving work relief or work training as part  
15 of an unemployment work-relief or work-training program assisted or financed in  
16 whole or in part by any federal agency or by an agency of a state or political  
17 subdivision thereof or by an Indian tribe, unless otherwise required as a condition  
18 for participation by the unit or organization in such program;

19           **SECTION 17.** 108.02 (15) (k) 19. b. of the statutes is amended to read:

20           108.02 (15) (k) 19. b. The individual has been paid or is treated as having been  
21 paid wages or other remuneration of \$500 or more during his or her base period for  
22 services performed for at least one employer other than the seasonal employer that  
23 is subject to the unemployment insurance law of any state or the federal government;  
24 ~~or~~

25           **SECTION 18.** 108.02 (15) (k) 20. b. of the statutes is amended to read:

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1           108.02 (15) (k) 20. b. Respiratory care service for ventilator-dependent  
2 individuals authorized under s. 49.46 (2) (b) 6. m., for which medical assistance  
3 reimbursement is available as a covered service, provided by an individual who is  
4 certified by the department of health services under s. 49.45 (2) (a) 11. as a provider  
5 of respiratory care services in independent practice; or

6           **SECTION 19.** 108.02 (15) (k) 21. of the statutes is created to read:

7           108.02 (15) (k) 21. Provided by an individual to an ill or disabled family member  
8 who is the employing unit for such service, if the service is personal care or  
9 companionship. For purposes of this subdivision, "family member" means a spouse,  
10 parent, child, grandparent, or grandchild of an individual, by blood or adoption, or  
11 an individual's step parent, step child, or domestic partner. For purposes of this  
12 subdivision, "domestic partner" has the meaning given in s. 770.01 (1).

13           **SECTION 20.** 108.02 (15s) of the statutes is created to read:

14           108.02 (15s) FULL-TIME WORK. "Full-time work" means work performed for 32  
15 or more hours per week.

16           **SECTION 21.** 108.02 (20m) of the statutes is created to read:

17           108.02 (20m) PART-TIME WORK. "Part-time work" means work performed for  
18 less than 32 hours per week.

19           **SECTION 22.** 108.02 (21e) (intro.) of the statutes is amended to read:

20           108.02 (21e) PROFESSIONAL EMPLOYER ORGANIZATION. (intro.) "Professional  
21 employer organization" means any person who is currently registered as a  
22 professional employer organization with the department of regulation and licensing  
23 in accordance with ch. 461, who contracts to provide the nontemporary, ongoing  
24 employee workforce of more than one client under a written leasing contract, the  
25 majority of whose clients are not under the same ownership, management, or control

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1 as the person other than through the terms of the contract, and who under contract  
2 and in fact:

3 **SECTION 23.** 108.04 (1) (g) (intro.) of the statutes is amended to read:

4 108.04 (1) (g) (intro.) Except as provided in par. (gm) and s. 108.06 (7) (d), the  
5 base period wages utilized to compute total benefits payable to an individual under  
6 s. 108.06 (1) as a result of the following employment shall not exceed 10 times the  
7 individual's weekly benefit rate based solely on that employment under s. 108.05 (1):

8 **SECTION 24.** 108.04 (2) (a) (intro.) of the statutes is amended to read:

9 108.04 (2) (a) (intro.) Except as provided in par. (b) and sub. (16) (am) and (b)  
10 and as otherwise expressly provided, a claimant is eligible for benefits as to any given  
11 week ~~for which he or she earns no wages~~ only if:

12 **SECTION 25.** 108.04 (2) (d) of the statutes is repealed.

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

14 108.04 (7) (k) Paragraph (a) does not apply to an employee who terminates his  
15 or her part-time work ~~consisting of not more than 30 hours per week~~ if the employee  
16 is otherwise eligible to receive benefits because of the loss of the employee's full-time  
17 employment and the loss of the full-time employment makes it economically  
18 unfeasible for the employee to continue the part-time work.

19 **SECTION 27.** 108.04 (7) (o) of the statutes is amended to read:

20 108.04 (7) (o) Paragraph (a) does not apply to an employee who terminates his  
21 or her work in one of 2 or more concurrently held positions, at least one of which  
22 ~~consists of more than 30 hours per week~~ is full-time work, if the employee terminates  
23 his or her work before receiving notice of termination from a position which ~~consists~~  
24 ~~of more than 30 hours per week~~ is full-time work.

25 **SECTION 28.** 108.04 (11) (be) (intro.) of the statutes is amended to read:

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1           108.04 (11) (be) (intro.) A claimant shall forfeit benefits ~~and be disqualified~~  
2 ~~from receiving benefits~~ for acts of concealment described in pars. (a) and (b) as  
3 follows:

4           **SECTION 29.** 108.04 (16) (a) of the statutes is repealed and recreated to read:

5           108.04 (16) (a) In this subsection, "approved training" means:

6           1. A course of vocational training or basic education which is a prerequisite to  
7 such training in which an individual is enrolled if:

8           a. The course is expected to increase the individual's opportunities to obtain  
9 employment;

10           b. The course is given by a school established under s. 38.02 or another training  
11 institution approved by the department;

12           c. The individual is enrolled full time as determined by the training institution;

13           d. The course does not grant substantial credit leading to a bachelor's or higher  
14 degree; and

15           e. The individual is attending regularly and making satisfactory progress in  
16 the course.

17           2. A program administered by the department for the training of unemployed  
18 workers, other than the youth apprenticeship program under s. 106.13;

19           3. The plan of any state for training under the federal trade act, 19 USC 2296;

20 or

21           4. A plan for training approved under the federal workforce investment act, 29  
22 USC 2822.

23           **SECTION 30.** 108.04 (16) (am) of the statutes is created to read:

24           108.04 (16) (am) The department shall not apply any benefit reduction or  
25 disqualification under sub. (1) (a), (2) (a), or (8), or s. 108.141 (3g) (a) or (c) to any

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1 otherwise eligible individual for any week as a result of the individual's enrollment  
2 in approved training.

3 **SECTION 31.** 108.04 (16) (b) of the statutes is amended to read:

4 108.04 (16) (b) The department shall not apply any benefit reduction or  
5 disqualification under sub. (1) (b), ~~(2) (a)~~, (7) (c), or (8) (e) or s. 108.141 (3g) (d) that  
6 is not the result of approved training ~~or basic education under par. (a)~~ while an  
7 individual is enrolled in ~~a course of training or education that meets the standards~~  
8 specified in par. (a) approved training.

9 **SECTION 32.** 108.04 (16) (c) of the statutes is repealed.

10 **SECTION 33.** 108.04 (16) (d) of the statutes is amended to read:

11 108.04 (16) (d) If an individual is enrolled ~~under the plan of any state for~~  
12 ~~training under 19 USC 2296 or a plan for training of dislocated workers approved~~  
13 ~~under 29 USC 2822~~ in approved training specified in par. (a) 3. or 4.:

14 1. The department shall not deny benefits under sub. (7) as a result of the  
15 individual's leaving unsuitable work to enter or continue such training, as a result  
16 of the individual's leaving work that the individual engaged in on a temporary basis  
17 during a break in the training or a delay in the commencement of the training, or  
18 because the individual left on-the-job training not later than 30 days after  
19 commencing that training because the individual did not meet the requirements of  
20 the federal trade act under 19 USC 2296 (c) (1) (B); and

21 2. The requalifying requirements under subs. (7) and (8) do not apply while the  
22 individual is enrolled in such approved training specified in par. (a) 3. or 4.

23 **SECTION 34.** 108.04 (16) (e) of the statutes is amended to read:

24 108.04 (16) (e) The department shall charge to the fund's balancing account the  
25 cost of benefits paid to an individual that are otherwise chargeable to the account of

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

4 **SECTION 35.** 108.04 (16) (f) of the statutes is created to read:

5 108.04 (16) (f) As a condition to qualification of a course as approved training  
6 for an individual under this subsection, the department may require a certification  
7 from the training institution showing the individual's attendance and progress in the  
8 course.

9 **SECTION 36.** 108.05 (3) (b) 1. a., b. and c. of the statutes are amended to read:

10 108.05 (3) (b) 1. a. The claimant works full time for that employer ~~at least 35~~  
11 ~~hours~~ in that week at the same or a greater rate of pay, excluding bonuses, incentives,  
12 overtime or any other supplement to the earnings, as the claimant was paid by that  
13 employer in that quarter of the claimant's base period in which the claimant was paid  
14 his or her highest wages;

15 b. The claimant receives from that employer sick pay, holiday pay, vacation pay  
16 or termination pay which, by itself or in combination with wages earned for work  
17 performed in that week for that employer, is equivalent to pay for ~~at least 35 hours~~  
18 ~~of full-time~~ work at that same or a greater rate of pay; or

19 c. The amount that the claimant would have earned within that week from that  
20 employer in available work under s. 108.04 (1) (a) which is treated as wages under  
21 s. 108.04 (1) (bm), by itself or in combination with the wages earned for work  
22 performed in that week for that employer and the pay received under subd. 1. b., is  
23 equivalent to pay for ~~at least 35 hours~~ of full-time work at that same or a greater rate  
24 of pay.

25 **SECTION 37.** 108.05 (3) (e) of the statutes is created to read:



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1           108.05 (3) (e) For purposes of this subsection, a bonus or profit-sharing  
2 payment is considered to be earned in the week in which the bonus or payment is paid  
3 by the employer. A bonus or profit-sharing payment is considered to be paid on the  
4 date of the check if payment is made by check, on the date of direct deposit by the  
5 employer at a financial institution if payment is deposited by the employer to an  
6 employee's account at a financial institution, or on the date that the bonus or  
7 payment is received by the employee if any other method of payment is used.

8           **SECTION 38.** 108.05 (7) (d) 1. (intro.) and a. of the statutes are consolidated,  
9 renumbered 108.05 (7) (d) 1. and amended to read:

10           108.05 (7) (d) 1. If a pension payment is not paid on a weekly basis, the  
11 department shall allocate and attribute the payment to specific weeks in accordance  
12 with subd. 2. if:—a. The the payment is actually or constructively received on a  
13 periodic basis; or. If a pension payment is actually or constructively received on other  
14 than a periodic basis, the department shall allocate the payment to the week in which  
15 it is received.

16           **SECTION 39.** 108.05 (7) (d) 1. b. of the statutes is renumbered 108.05 (7) (d) 1m.  
17 and amended to read:

18           108.05 (7) (d) 1m. The For purposes of this paragraph, a payment is actually  
19 or constructively received on other than a periodic basis and if it has become  
20 definitely allocated and payable to the claimant by the close of each such a given  
21 week, and the department has provided due notice to the claimant that the payment  
22 will be allocated in accordance with subd. 2. b. 1.

23           **SECTION 40.** 108.05 (7) (d) 2. (intro.) and a. of the statutes are consolidated,  
24 renumbered 108.05 (7) (d) 2. and amended to read:

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1           108.05 (7) (d) 2. The department shall allocate a pension payment as follows:  
2           ~~a. If the payment that is~~ is actually or constructively received on a periodic basis, the  
3           ~~amount allocated by allocating~~ to each week is the fraction of the payment  
4           attributable to that week.

5           **SECTION 41.** 108.05 (7) (d) 2. b. of the statutes is repealed.

6           **SECTION 42.** 108.06 (7) (a) 2. and (b) 4. of the statutes, as created by 2009  
7           Wisconsin Act 11, are amended to read:

8           108.06 (7) (a) 2. "Training program" means any program of a type specified in  
9           s. 108.04 (16) (a).

10           (b) 4. Is not receiving similar stipends or other training allowances for  
11           nontraining costs; and

12           **SECTION 43.** 108.06 (7) (b) 5. of the statutes, as created by 2009 Wisconsin Act  
13           11, is repealed.

14           **SECTION 44.** 108.06 (7) (d) of the statutes, as created by 2009 Wisconsin Act 11,  
15           is amended to read:

16           108.06 (7) (d) ~~No~~ A claimant may receive total benefits under this subsection  
17           ~~greater than~~ of not more than 26 times the claimant's weekly benefit rate that  
18           applied to the claimant's applicable benefit year while enrolled in a training  
19           program. The benefits authorized under this subsection are in addition to any  
20           regular benefits, extended benefits, or additional benefits authorized under federal  
21           law to which a claimant may be entitled.

22           **SECTION 45.** 108.06 (7) (h) and (j) of the statutes, as created by 2009 Wisconsin  
23           Act 11, are amended to read:

24           108.06 (7) (h) The occupations that qualify as ~~declining or~~ high-demand for  
25           purposes of this subsection shall be determined by the department.

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1 (j) The department shall charge benefits paid under this subsection in the same  
2 manner as benefits are charged under s. 108.04 (16) (e).

3 **SECTION 46.** 108.09 (2) (bm) of the statutes is amended to read:

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

8 **SECTION 47.** 108.09 (4s) of the statutes is amended to read:

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

14 **SECTION 48.** 108.10 (4) of the statutes is amended to read:

15 108.10 (4) The department or the employing unit may commence action for the  
16 judicial review of a commission decision under this section, provided the department,  
17 or the employing unit, after exhausting the remedies provided under this section, has  
18 commenced such action within 30 days after such decision was mailed to the  
19 employing unit's last-known address. The scope of judicial review, and the manner  
20 thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In  
21 an action commenced by an employing unit under this section, the department shall  
22 be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the  
23 complaint commencing the action.

24 **SECTION 49.** 108.152 (1) (c) of the statutes is repealed.

25 **SECTION 50.** 108.152 (3) of the statutes is repealed.

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1           **SECTION 51.** 108.152 (6) (title) of the statutes is amended to read:

2           108.152 (6) (title) ~~FAILURE TO MAKE REQUIRED PAYMENTS OR FILE ASSURANCE OF~~  
3 ~~REIMBURSEMENT.~~

4           **SECTION 52.** 108.152 (6) (a) (intro.) of the statutes is amended to read:

5           108.152 (6) (a) (intro.) If an Indian tribe or tribal unit fails to pay required  
6 contributions, reimbursements in lieu of contributions, penalties, interest, or fees  
7 within 90 days of the time that the department transmits to the tribe a final notice  
8 of delinquency, ~~or fails to file or maintain the required assurance of reimbursement~~  
9 ~~as provided in subs. (1) (c) and (3):~~

10          **SECTION 53.** 108.152 (6) (a) 2. of the statutes is amended to read:

11          108.152 (6) (a) 2. Any valid election of reimbursement financing is terminated  
12 as of the end of the current calendar year ~~and any pending election that fails to meet~~  
13 ~~the requirement to file an assurance of reimbursement under sub. (1) (c) is~~  
14 ~~terminated immediately.~~

15          **SECTION 54.** 108.16 (6) (L) and (m) of the statutes are created to read:

16          108.16 (6) (L) The amount of any overpayments that are recovered by the  
17 department by setoff pursuant to s. 71.93 or the amount of any overpayments  
18 resulting from fraud that are recovered by the department by offset pursuant to  
19 section 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009, or a  
20 similar federal program.

21          (m) Any amounts collected from assessments levied under s. 108.19 (1m)  
22 exceeding the amounts needed to pay interest due on advances from the federal  
23 unemployment account under title XII of the Social Security Act (42 USC 1321 to  
24 1324).

25          **SECTION 55.** 108.16 (6m) (g) of the statutes is created to read:

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1           108.16 **(6m)** (g) Any payments of fees or expenses assessed by the U.S.  
2           secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code  
3           in effect on June 1, 2009, or a similar federal program.

4           **SECTION 56.** 108.16 (10) of the statutes is amended to read:

5           108.16 **(10)** All money withdrawn from the fund shall be used solely in the  
6           payment of benefits, exclusive of expenses of administration, and for refunds of sums  
7           erroneously paid into the fund, for refund of a positive net balance in an employer's  
8           reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the  
9           employer, and for expenditures made pursuant to s. 108.161 and consistently with  
10          the federal limitations applicable to s. 108.161, and for payment of fees and expenses  
11          for collection of overpayments resulting from fraud that are assessed by the U.S.  
12          secretary of the treasury under section 6402 (f) of the federal Internal Revenue Code  
13          in effect on June 1, 2009, or a similar federal program.

14          **SECTION 57.** 108.18 (7) (a) of the statutes is amended to read:

15          108.18 **(7)** (a) 1. Except as provided in pars. (b) to ~~(h)~~ (i), any employer may  
16          make payments to the fund during the month of November in excess of those required  
17          by this section and s. 108.19 (1) and (1e). Each payment shall be credited to the  
18          employer's account for the purpose of computing the employer's reserve percentage  
19          as of the immediately preceding computation date.

20          2. Each payment shall be treated as a contribution required and irrevocably  
21          paid under this chapter with respect to payrolls preceding the date it is credited  
22          except as a refund or credit is authorized under par. (b), (e) ~~or~~ (h) or (i).

23          **SECTION 58.** 108.18 (7) (b) of the statutes is amended to read:

24          108.18 **(7)** (b) ~~No~~ Except as provided in par. (i), no employer may, by means of  
25          a voluntary contribution under par. (a), reduce the employer's contribution rate to

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1 a rate lower than the next lower rate which would have applied to the employer for  
2 the following calendar year. Any contributions in excess of the amount required to  
3 reduce an employer's rate to the extent permitted under this paragraph shall be  
4 applied against any outstanding liability of the employer, or if there is no such  
5 liability shall be refunded to the employer or established as a credit, without interest,  
6 against future contributions payable by the employer, at the employer's option.

7 **SECTION 59.** 108.18 (7) (d) of the statutes is amended to read:

8 108.18 (7) (d) A payment under this subsection is timely if it is received by the  
9 department no later than November 30 following the computation date for the  
10 calendar year to which it applies, ~~or if mailed is either postmarked no later than that~~  
11 ~~date or is received by the department no later than 3 days after that date.~~

12 **SECTION 60.** 108.18 (7) (h) of the statutes is amended to read:

13 108.18 (7) (h) The department shall establish contributions other than those  
14 required by this section and s. 108.19 (1) and (1e) and contributions other than those  
15 submitted during the month of November or authorized under par. (f) or (i) 2. as a  
16 credit, without interest, against future contributions payable by the employer or  
17 shall refund the contributions at the employer's option.

18 **SECTION 61.** 108.18 (7) (i) of the statutes is created to read:

19 108.18 (7) (i) 1. An employer that suffers physical damage to its business  
20 caused by a catastrophic event for which the employer is not primarily responsible,  
21 and incurs benefit charges to its account for layoffs due to that damage may, by  
22 means of a voluntary contribution under par. (a), increase the employer's reserve  
23 percentage to no greater than the reserve percentage that would have applied to the  
24 employer as of the next computation date had that damage not caused the employer  
25 to lay off its employees. An employer that makes a voluntary contribution under this

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1 subdivision shall notify the department of its election to have its contribution treated  
2 in the manner provided in this paragraph and shall submit proof, in the form and  
3 manner prescribed by the department, to establish that its employees were laid off  
4 due to the catastrophic event.

5 2. If an employer makes a payment under subd. 1. after November 30 and  
6 before November 1 of the succeeding year, the department shall establish the  
7 payment as a credit and apply the payment as a voluntary contribution to the  
8 employer's account when the next rate computation occurs. Any amount paid to the  
9 department in excess of the amount that may be applied under subd. 1 in any year  
10 may continue to be held as a credit, without interest, against future required or  
11 voluntary contributions for a calendar year or refunded to the employer, at the  
12 employer's option.

13 **SECTION 62.** 108.19 (1m) of the statutes is amended to read:

14 108.19 (1m) Each employer subject to this chapter as of the date a rate is  
15 established under this subsection shall pay an assessment to the administrative  
16 account at a rate established by the department sufficient to pay interest due on  
17 advances from the federal unemployment account under title XII of the social  
18 security act (42 USC 1321 to 1324). The rate established by the department for  
19 employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1) shall  
20 be 75% of the rate established for other employers. The amount of any employer's  
21 assessment shall be the product of the rate established for that employer multiplied  
22 by the employer's payroll of the previous calendar year as taken from quarterly  
23 employment and wage reports filed by the employer under s. 108.205 (1) or, in the  
24 absence of the filing of such reports, estimates made by the department. Each  
25 assessment made under this subsection is due on the 30th day commencing after the

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1 date on which notice of the assessment is mailed by the department. If the amounts  
2 collected under this subsection are in excess of the amounts needed to pay interest  
3 due, the ~~amounts excess~~ shall be retained in the administrative account and utilized  
4 ~~for the purposes specified in s. 108.20 (2m)~~ credited to the balancing account.

5 **SECTION 63.** 108.20 (3) of the statutes is amended to read:

6 108.20 (3) There shall be included in the moneys governed by sub. (2m) any  
7 amounts collected by the department under ss. 108.04 (11) (c) and (cm) and 108.22  
8 (1) (a), (ac), (ad), and (af) as tardy filing fees, forfeitures, interest on delinquent  
9 payments, or other penalties ~~and any excess moneys collected under s. 108.19 (1m).~~

10 **SECTION 64.** 108.22 (8) (b) 1. of the statutes is renumbered 108.22 (8) (b) 1.

11 (intro.) and amended to read:

12 108.22 (8) (b) 1. (intro.) To recover any overpayment to an individual which is  
13 not otherwise repaid or recovery of which has not been waived, the department may  
14 recoup the amount of the overpayment by:

15 a. Deducting the amount of the overpayment from benefits the individual  
16 would otherwise be eligible to receive, ~~or file;~~

17 b. Filing a warrant against the liable individual in the same manner as is  
18 provided in this section for collecting delinquent payments from employers, ~~or both;~~

19 **SECTION 65.** 108.22 (8) (b) 1. c. and d. of the statutes are created to read:

20 108.22 (8) (b) 1. c. Setting off the amount of the overpayment against a refund  
21 or disbursement due pursuant to s. 71.93; or

22 d. If the overpayment results from fraud, offsetting the amount of the  
23 overpayment against a federal tax refund as provided in section 6402 (f) of the federal  
24 Internal Revenue Code in effect on June 1, 2009, or a similar federal program.



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1           **SECTION 66.** 108.24 (3) of the statutes is renumbered 108.24 (3) (a) (intro.) and  
2 amended to read:

3           108.24 (3) (a) (intro.) ~~Any person who makes~~ Whoever does any of the following  
4 shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more  
5 than 90 days or both:

6           1. Makes a deduction from the wages of an employee because of liability for  
7 contributions or payments in lieu of contributions under this chapter or because of  
8 the employee's potential right to benefits, ~~or who knowingly,~~

9           2. Knowingly refuses or fails to furnish to an employee any notice, report or  
10 information duly required under this chapter by the department to be furnished to  
11 such employee, ~~or who, directly,~~

12           3. Directly or indirectly, by promise of reemployment or by threat not to employ,  
13 to terminate, or not to reemploy or by any other means, attempts to induce an  
14 employee to refrain;

15           a. Refrain from claiming or accepting benefits ~~or to waive, participating in an~~  
16 audit or investigation by the department, or testifying in a hearing held under s,  
17 108.09 or 108.10.

18           b. Waive any ~~other~~ right under this chapter, ~~or whose rehiring policy has~~  
19 ~~discriminated against a former employee by reason of their having claimed benefits,~~  
20 ~~shall be fined not less than \$100 nor more than \$500 or imprisoned not more than~~  
21 ~~90 days, or both; and each such deduction from wages, every day of such refusal or~~  
22 ~~failure, and each such attempt to induce,~~

23           **(b) Each violation of this subsection constitutes a separate offense.**

24           **SECTION 67.** 108.24 (3) (a) 4. of the statutes is created to read:

**BILL**

1           108.24 (3) (a) 4. Discriminates or retaliates against an individual because the  
2 individual claims benefits, participates in an audit or investigation by the  
3 department under this chapter, testifies in a hearing under s. 108.09 or 108.10, or  
4 exercises any other right under this chapter.

**SECTION 68. Nonstatutory provisions.**

5           (1) CERTAIN BENEFIT PAYMENTS VALIDATED. Notwithstanding section 108.04 (16),  
6 2007 stats., if any unemployment insurance claimant who was enrolled in training  
7 approved under the federal workforce investment act, 29 USC 2822, received  
8 benefits concurrently with that enrollment during the period beginning on or after  
9 August 23, 2009, and ending on the day before the time that the treatment of section  
10 108.04 (16) of the statutes by this act initially applies, and the claimant was  
11 otherwise eligible to receive the benefits, the payment of benefits to the claimant is  
12 valid if the claimant would have qualified to receive the benefits under section 108.04  
13 (16) of the statutes, as affected by this act.

14           (2) ADMINISTRATIVE ACCOUNT TRANSFER. Within 30 days after the effective date  
15 of this subsection, the treasurer of the unemployment reserve fund shall transfer  
16 from the administrative account of the fund to the balancing account of the fund any  
17 amount of money in the administrative account as of the date of the transfer that is  
18 derived from assessments for interest payments made under section 108.19 (1m) of  
19 the statutes and is in excess of the amount needed to make those payments.  
20

**SECTION 69. Initial applicability.**

21           (1) The treatment of sections 108.02 (12) (bm) (intro.) and 1. to 10. and (c)  
22 (intro.) and 2. and 108.09 (2) (bm) and (4s) of the statutes, the renumbering and  
23 amendment of section 108.02 (12) (c) 1. of the statutes, and the creation of section  
24

**BILL**

1 108.02 (12) (c) 1. a. to e. of the statutes, with respect to contribution requirements,  
2 first apply with respect to services performed after December 31, 2010.

3 (2) The treatment of sections 108.02 (12) (bm) (intro.) and 1. to 10. and (c)  
4 (intro.) and 2. and 108.09 (2) (bm) and (4s) of the statutes, the renumbering and  
5 amendment of section 108.02 (12) (c) 1. of the statutes, and the creation of section  
6 108.02 (12) (c) 1. a. to e. of the statutes, with respect to benefit eligibility, first apply  
7 with respect to services performed after December 31, 2010.

8 (3) The treatment of section 108.02 (15) (k) 19. b., 20. b., and 21. of the statutes,  
9 with respect to contribution requirements, first applies with respect to services  
10 performed after December 31, 2010.

11 (4) The treatment of section 108.02 (15) (k) 19. b., 20. b., and 21. of the statutes,  
12 with respect to benefit eligibility, first applies with respect to benefit years beginning  
13 on January 2, 2011.

14 (5) The treatment of sections 108.02 (15s) and (20m) (with respect to  
15 terminations of employment) and 108.04 (7) (k) and (o) of the statutes first applies  
16 with respect to voluntary terminations of employment occurring on the effective date  
17 of this subsection.

18 (6) The treatment of sections 108.02 (15s) and (20m) (with respect to benefits  
19 for partial unemployment) and 108.05 (3) (b) 1. a., b., and c. of the statutes first  
20 applies with respect to weeks of unemployment beginning July 3, 2011.

21 (7) The treatment of section 108.02 (21e) (intro.) of the statutes (with respect  
22 to liability for contributions and reimbursements) first applies with respect to  
23 determinations issued under section 108.10 of the statutes beginning with the first  
24 quarter beginning after the effective date of this subsection.

**BILL**

1 (8) The treatment of sections 108.04 (1) (g) (intro.), (2) (a) (intro.) and (d), and  
2 (16) (a), (am), (b), (c), (d), and (f) and 108.06 (7) (a) 2., (b) 4. and 5., (d), (h), and (j) of  
3 the statutes (with respect to benefit payments) first applies with respect to weeks of  
4 unemployment beginning on the effective date of this subsection.

5 (9) The treatment of section 108.04 (16) (e) of the statutes first applies with  
6 respect to weeks of unemployment beginning on October 3, 2010.

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

9 (11) The treatment of section 108.05 (7) (d) 1. (intro.), a., and b. and 2. (intro.),  
10 a., and b. of the statutes first applies with respect to pension payments that are  
11 received on other than a periodic basis in weeks of unemployment beginning on or  
12 after the effective date of this subsection.

13 (12) The treatment of section 108.152 (1) (c), (3), and (6) (title) and (a) (intro.)  
14 and 2. of the statutes first applies with respect to Indian tribes and tribal units  
15 electing or continuing reimbursement financing of benefits for calendar years  
16 beginning after December 31, 2010.

17 (13) The treatment of section 108.16 (6) (L) and (m), (6m) (g), and (10) of the  
18 statutes, the renumbering and amendment of section 108.22 (8) (b) 1. of the statutes,  
19 and the creation of section 108.22 (8) (b) 1. c. and d. of the statutes first apply with  
20 respect to satisfaction of liabilities outstanding on the effective date of this  
21 subsection.

**SECTION 70. Effective date.**

22 (1) This act takes effect on July 4, 2010.  
23

24 (END)