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1 **SECTION 43.** 108.09 (4) (f) 1. of the statutes is amended to read:

2 108.09 (4) (f) 1. ~~Except as provided in par. (e) 3., within~~ Within 21 days after
3 its decision was electronically delivered or mailed to the parties, the appeal tribunal
4 may, on its own motion, amend or set aside its decision and may thereafter make new
5 findings and issue a decision on the basis of evidence previously submitted in such
6 case, or the same or another appeal tribunal may make new findings and issue a
7 decision after taking additional testimony.

8 **SECTION 44.** 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

9 108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely
10 petition for review of the appeal tribunal decision by the commission, the appeal
11 tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at
12 any time if the appeal tribunal finds that:

13 **SECTION 45.** 108.09 (4) (f) 3. of the statutes is amended to read:

14 108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for
15 review of the appeal tribunal decision by the commission, the appeal tribunal may,
16 within 2 years after the date of the decision, reopen its decision if it has reason to
17 believe that a party offered false evidence or a witness gave false testimony on an
18 issue material to its decision. Thereafter, and after receiving additional evidence or
19 taking additional testimony, the same or another appeal tribunal may set aside its
20 original decision, make new findings, and issue a decision.

21 **SECTION 46.** 108.09 (4o) of the statutes is amended to read:

22 108.09 (4o) DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. In any hearing
23 before an appeal tribunal under this section, a departmental record relating to a
24 claim for benefits, other than a report specified in sub. (4m), constitutes prima facie
25 evidence, and shall be admissible to prove, that an employer provided or failed to

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1 provide to the department complete and correct information in a fact-finding
2 investigation of the claim, notwithstanding that the record or a statement contained
3 in the record may be uncorroborated hearsay and may constitute the sole basis upon
4 which issue of the employer's failure is decided, if the parties appearing at the
5 hearing have been given an opportunity to review the record at or before the hearing
6 and to rebut the information contained in the record. A record of the department that
7 is admissible under this subsection shall be regarded as self authenticating and shall
8 require no foundational or other testimony for its admissibility, unless the
9 circumstances affirmatively indicate a lack of trustworthiness in the record. If such
10 a record is admitted and made the basis of a decision, the record may constitute
11 substantial evidence under ~~s. 102.23 (6)~~ sub. (7) (f). For purposes of this subsection,
12 "departmental record" means a memorandum, report, record, document, or data
13 compilation that has been made or maintained by employees of the department in
14 the regular course of the department's fact-finding investigation of a benefit claim,
15 is contained in the department's paper or electronic files of the benefit claim, and
16 relates to the department's investigative inquiries to an employer or statements or
17 other matters submitted by the employer or its agent in connection with the
18 fact-finding investigation of a benefit claim. A departmental record may not be
19 admitted into evidence under this subsection or otherwise used under this
20 subsection for any purpose other than to prove whether an employer provided or
21 failed to provide to the department complete and correct information in a
22 fact-finding investigation of a claim.

23 **SECTION 47.** 108.09 (5) (b) of the statutes is amended to read:

24 108.09 (5) (b) All testimony at any hearing under this section shall be taken
25 ~~down by a stenographer, or recorded by a recording machine~~ electronic means, but

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1 need not be transcribed unless either of the parties requests a transcript ~~prior to~~
2 before expiration of that party's right to further appeal under this section and pays
3 a fee to the commission in advance, the amount of which shall be established by rule
4 of the commission. When the commission provides a transcript ~~is thus furnished to~~
5 one of the parties upon request, the commission shall also provide a copy of the
6 transcript ~~shall be furnished the to all other party parties~~ free of charge. The
7 transcript fee ~~thus~~ collected shall be paid to the administrative account.

8 **SECTION 48.** 108.09 (5) (c) of the statutes is repealed and recreated to read:

9 108.09 (5) (c) The department shall furnish a copy of the electronic recording
10 to the parties upon payment of any fee required by the department by rule.

11 **SECTION 49.** 108.09 (5) (d) of the statutes is amended to read:

12 108.09 (5) (d) In its review of the decision of an appeal tribunal, the commission
13 shall use the electronic recording of the hearing or a written synopsis of the
14 testimony ~~and other evidence taken at a hearing or shall use~~ a transcript of the
15 hearing prepared, under the direction of the department or commission, ~~by an~~
16 ~~employee of the department, an employee of the commission or a contractor. If a~~
17 ~~party shows to the commission that a synopsis is not sufficiently complete and~~
18 ~~accurate to fairly reflect the relevant and material testimony and other evidence~~
19 ~~taken, the commission shall direct the preparation of a transcript. If a transcript is~~
20 ~~prepared, the transcript shall indicate the transcriber's name and whether the~~
21 ~~transcriber is an employee of the department, an employee of the commission, or a~~
22 ~~contractor and shall also use any other evidence taken at the hearing.~~

23 **SECTION 50.** 108.09 (6) (a) of the statutes is amended to read:

24 108.09 (6) (a) The department or any party may petition the commission for
25 review of an appeal tribunal decision, pursuant to ~~commission~~ rules promulgated by

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1 ~~the commission~~, if such ~~the~~ petition is received by the ~~department or~~ commission or
2 postmarked within 21 days after the appeal tribunal decision was electronically
3 delivered to the party or mailed to the party's last-known address. The commission
4 shall dismiss any petition if not timely filed unless the petitioner shows ~~probable~~
5 good cause that the reason for having failed to file the petition timely was beyond the
6 control of the petitioner. If the petition is not dismissed, the commission may take
7 action under par. (d).

8 **SECTION 51.** 108.09 (6) (b) of the statutes is amended to read:

9 108.09 (6) (b) Within 28 days after a decision of the commission is electronically
10 delivered or mailed to the parties, the commission may, on its own motion, set aside
11 the decision for further consideration and take action under par. (d).

12 **SECTION 52.** 108.09 (6) (c) of the statutes is amended to read:

13 108.09 (6) (c) On its own motion, for reasons it deems sufficient, the commission
14 may set aside any final determination of the department or appeal tribunal or
15 commission decision within 2 years ~~from~~ after the date thereof upon grounds of
16 mistake or newly discovered evidence, and take action under par. (d). The
17 commission may set aside any final determination of the department or any decision
18 of an appeal tribunal or of the commission at any time, and take action under par.
19 (d), if the benefits paid or payable to a claimant have been affected by wages earned
20 by the claimant ~~which~~ that have not been paid, and the commission is provided with
21 notice from the appropriate state or federal court or agency that a wage claim for
22 those wages will not be paid in whole or in part.

23 **SECTION 53.** 108.09 (6) (d) of the statutes is amended to read:

24 108.09 (6) (d) In any case before the commission for action under this
25 subsection, the commission may affirm, reverse, modify, or set aside the decision on

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1 the basis of the evidence previously submitted, ~~may~~; order the taking of additional
2 evidence as to such matters as it may direct, ~~or it may~~; or remand the matter to the
3 department for further proceedings.

4 **SECTION 54.** 108.09 (7) (a) and (b) of the statutes are amended to read:

5 108.09 (7) (a) ~~The department or either~~ Any party that is not the department
6 may commence an action for the judicial review of a decision of the commission under
7 this chapter after exhausting the remedies provided under this section ~~if the party~~
8 ~~or the department has commenced such action in accordance with s. 102.23 within~~
9 ~~30 days after a decision of the commission is mailed to a party's last known address.~~
10 The department may commence an action for the judicial review of a commission
11 decision under this section, but the department is not required to have been a party
12 to the proceedings before the commission or to have exhausted the remedies provided
13 under this section. In an action commenced under this section by a party that is not
14 the department, the department shall be a defendant and shall be named as a party
15 in the complaint commencing the action. If a plaintiff fails to name either the
16 department or the commission as defendants and serve the commission as required
17 by this subsection, the court shall dismiss the action.

18 (b) Any judicial review under this chapter shall be confined to questions of law,
19 ~~and the provisions of ch. 102 with respect to judicial review of orders and awards~~
20 ~~shall likewise apply to any decision of the commission reviewed under this section~~
21 and shall be in accordance with this subsection. In any such judicial action, the
22 commission may appear by any licensed attorney who is a salaried employee of the
23 commission and has been designated by it for ~~this~~ that purpose, or, at the
24 commission's request, by the department of justice. In any such judicial action, the

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1 department may appear by any licensed attorney who is a salaried employee of the
2 department and has been designated by it for that purpose.

3 **SECTION 55.** 108.09 (7) (c) to (h) of the statutes are created to read:

4 108.09 (7) (c) 1. The findings of fact made by the commission acting within its
5 powers shall, in the absence of fraud, be conclusive. The order of the commission is
6 subject to review only as provided in this subsection and not under ch. 227 or s.
7 801.02. Within 30 days after the date of an order made by the commission, any party
8 or the department may, by serving a complaint as provided in subd. 3. and filing the
9 summons and complaint with the clerk of the circuit court, commence an action
10 against the commission for judicial review of the order. In an action for judicial
11 review of a commission order, every other party to the proceedings before the
12 commission shall be made a defendant. The department shall also be made a
13 defendant if the department is not the plaintiff. If the circuit court is satisfied that
14 a party in interest has been prejudiced because of an exceptional delay in the receipt
15 of a copy of any order, the circuit court may extend the time in which an action may
16 be commenced by an additional 30 days.

17 2. Except as provided in this subdivision, the proceedings shall be in the circuit
18 court of the county where the plaintiff resides, except that if the plaintiff is the
19 department, the proceedings shall be in the circuit court of the county where a
20 defendant other than the commission resides. The proceedings may be brought in
21 any circuit court if all parties appearing in the case agree or if the court, after notice
22 and a hearing, so orders. Commencing an action in a county in which no defendant
23 resides does not deprive the court of competency to proceed to judgment on the merits
24 of the case.

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1 3. In such an action, a complaint shall be served with an authenticated copy
2 of the summons. The complaint need not be verified, but shall state the grounds upon
3 which a review is sought. Service upon the commission or an agent authorized by
4 the commission to accept service constitutes complete service on all parties, but there
5 shall be left with the person so served as many copies of the summons and complaint
6 as there are defendants, and the commission shall mail one copy to each other
7 defendant.

8 4. Each defendant shall serve its answer within 20 days after the service upon
9 the commission under subd. 3., which answer may, by way of counterclaim or cross
10 complaint, ask for the review of the order referred to in the complaint, with the same
11 effect as if the defendant had commenced a separate action for the review of the order.

12 5. Within 60 days after appearing in an action for judicial review, the
13 commission shall make return to the court of all documents and materials on file in
14 the matter, all testimony that has been taken, and the commission's order and
15 findings. Such return of the commission, when filed in the office of the clerk of the
16 circuit court, shall constitute a judgment roll in the action, and it shall not be
17 necessary to have a transcript approved. After the commission makes return of the
18 judgment roll to the court, the court shall schedule briefing by the parties. Any party
19 may request oral argument before the court, subject to the provisions of law for a
20 change of the place of trial or the calling in of another judge.

21 6. The court may confirm or set aside the commission's order, but may set aside
22 the order only upon one or more of the following grounds:

- 23 a. That the commission acted without or in excess of its powers.
24 b. That the order was procured by fraud.
25 c. That the findings of fact by the commission do not support the order.

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1 (dm) The court shall disregard any irregularity or error of the commission or
2 the department unless it is made to affirmatively appear that a party was damaged
3 by that irregularity or error.

4 (e) The record in any case shall be transmitted to the commission within 5 days
5 after expiration of the time for appeal from the order or judgment of the court, unless
6 an appeal is taken from the order or judgment.

7 (f) If the commission's order depends on any fact found by the commission, the
8 court shall not substitute its judgment for that of the commission as to the weight
9 or credibility of the evidence on any finding of fact. The court may, however, set aside
10 the commission's order and remand the case to the commission if the commission's
11 order depends on any material and controverted finding of fact that is not supported
12 by credible and substantial evidence.

13 (g) Any party aggrieved by a judgment entered upon the review of any circuit
14 court order under this subsection may appeal as provided in ch. 808.

15 (h) The clerk of any court rendering a decision affecting a decision of the
16 commission shall promptly furnish all parties a copy of the decision without charge.

17 **SECTION 56.** 108.09 (7) (d) of the statutes is renumbered 108.09 (7) (i) and
18 amended to read:

19 108.09 (7) (i) ~~Notwithstanding ss. 102.26 (1) and 814.245, upon review of a~~
20 ~~decision of the commission under this chapter~~ No fees may be charged by the clerk
21 of any circuit court for the performance of any service required by this chapter, except
22 for the entry of judgments and for certified transcripts of judgments. In proceedings
23 to review an order under this section, costs as between the parties shall be in the
24 discretion of the court, ~~but.~~ Notwithstanding s. 814.245, no costs may be taxed
25 against the commission or the department.

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1 **SECTION 57.** 108.095 (2) of the statutes is amended to read:

2 108.095 (2) The department shall investigate whether any person has obtained
3 benefits that were payable to another person by means of any false statement or
4 representation, and may issue an initial determination concerning its findings. The
5 department shall electronically deliver a copy of the determination to, or mail a copy
6 of the determination to the last-known address of, each party affected thereby.
7 Unless designated by a determination under this section, an employing unit is not
8 a party to the determination. The department may set aside or amend the
9 determination at any time prior to a hearing concerning the determination under
10 sub. (5) on the basis of subsequent information or to correct a mistake, including an
11 error of law.

12 **SECTION 58.** 108.095 (3) of the statutes is amended to read:

13 108.095 (3) Any party to a determination may appeal that determination by
14 requesting a hearing concerning any matter in that determination if the request is
15 received by the department or postmarked within 14 days after the electronic
16 delivery or mailing.

17 **SECTION 59.** 108.095 (7) of the statutes is amended to read:

18 108.095 (7) Any party may commence an action for judicial review of a decision
19 of the commission under this section, after exhausting the remedies provided under
20 this section, by commencing the action within 30 days after the decision of the
21 commission is delivered electronically or mailed to the department and is delivered
22 electronically to, or mailed to the last-known address of, each other party. The scope
23 and manner of judicial review is the same as that provided in s. 108.09 (7).

24 **SECTION 60.** 108.10 (1) of the statutes is amended to read:

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1 108.10 (1) The department shall investigate the status, and the existence and
2 extent of liability of an employing unit, and may issue an initial determination
3 accordingly. The department may set aside or amend the determination at any time
4 prior to a hearing on the determination on the basis of subsequent information or to
5 correct a mistake, including an error of law. The department shall electronically
6 deliver a copy of each determination to, or mail a copy of each determination to the
7 last-known address of, the employing unit affected thereby. The employing unit may
8 request a hearing as to any matter in that determination if the request is received
9 by the department or postmarked within 21 days after the mailing and in accordance
10 with such procedure as the department prescribes by rule.

11 **SECTION 61.** 108.10 (2) of the statutes is amended to read:

12 108.10 (2) Any hearing duly requested shall be held before an appeal tribunal
13 established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable
14 to the proceedings before such tribunal. The department may be a party in any
15 proceedings before an appeal tribunal. The employing unit or the department may
16 petition the commission for review of the appeal tribunal's decision under s. 108.09
17 (6).

18 **SECTION 62.** 108.10 (4) of the statutes is amended to read:

19 108.10 (4) ~~The department or the employing unit may commence an~~ action for
20 the judicial review of a commission decision under this section, provided the
21 ~~department, or the employing unit, after exhausting~~ has exhausted the remedies
22 provided under this section, ~~has commenced such action within 30 days after such~~
23 ~~decision was mailed to the employing unit's last-known address.~~ The department
24 may commence an action for the judicial review of a commission decision under this
25 section, but the department is not required to have been a party to the proceedings

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1 before the commission or to have exhausted the remedies provided under this
2 section. In an action commenced under this section by a party that is not the
3 department, the department shall be a defendant and shall be named as a party in
4 the complaint commencing the action. If a plaintiff fails to name either the
5 department or the commission as defendants and serve them as required under s.
6 108.09 (7), the court shall dismiss the action. The scope of judicial review, and the
7 manner thereof insofar as applicable, shall be the same as that provided in s. 108.09
8 (7). ~~In an action commenced by an employing unit under this section, the department~~
9 ~~shall be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the~~
10 ~~complaint commencing the action.~~

11 **SECTION 63.** 108.10 (6) of the statutes is amended to read:

12 108.10 (6) Any determination by the department or any decision by an appeal
13 tribunal or by the commission is conclusive with respect to an employing unit unless
14 it the department or the employing unit files a timely request for a hearing or petition
15 for review as provided in this section. A determination or decision is binding upon
16 the department only insofar as the relevant facts were included in the record ~~which~~
17 that was before the department at the time the determination was issued, or before
18 the appeal tribunal or commission at the time the decision was issued.

19 **SECTION 64.** 108.14 (8n) (e) of the statutes, as affected by 2015 Wisconsin Act
20 55, is amended to read:

21 108.14 (8n) (e) The department shall charge this state's share of any benefits
22 paid under this subsection to the account of each employer by which the employee
23 claiming benefits was employed in the applicable base period, in proportion to the
24 total amount of wages he or she earned from each employer in the base period, except
25 that if s. 108.04 (1) (f), (5), (7) (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),

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1 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to employment by such
2 an employer who is subject to the contribution requirements of ss. 108.17 and 108.18,
3 the department shall charge the share of benefits based on employment with that
4 employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3)
5 would have applied to an employer that is not subject to the contribution
6 requirements of ss. 108.17 and 108.18, the department shall charge the share of
7 benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The
8 department shall also charge the fund's balancing account with any other state's
9 share of such benefits pending reimbursement by that state.

10 **SECTION 65.** 108.14 (27) of the statutes, as created by 2015 Wisconsin Act 55,
11 is repealed.

12 **SECTION 66.** 108.141 (3g) (a) 3. (intro.) of the statutes, as affected by 2015
13 Wisconsin Act 55, is amended to read:

14 108.141 (3g) (a) 3. (intro.) ~~Notwithstanding s. 108.02 (24g), work~~ Work is
15 suitable within the meaning of subd. 2. if:

16 **SECTION 67.** 108.141 (4) of the statutes is amended to read:

17 108.141 (4) WEEKLY EXTENDED BENEFIT RATE. The weekly extended benefit rate
18 payable to an individual for a week of total unemployment is the same as the rate
19 payable to the individual for regular benefits during his or her most recent benefit
20 year as determined under s. 108.05 (1). ~~No adjustment of rates under s. 108.05 (2)~~
21 ~~applies to benefits payable under this section.~~

22 **SECTION 68.** 108.141 (7) (a) of the statutes, as affected by 2015 Wisconsin Act
23 55, is amended to read:

24 108.141 (7) (a) The department shall charge the state's share of each week of
25 extended benefits to each employer's account in proportion to the employer's share

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1 of the total wages of the employee receiving the benefits in the employee's base
2 period, except that if the employer is subject to the contribution requirements of ss.
3 108.17 and 108.18 the department shall charge the share of extended benefits to
4 which s. 108.04 (1) (f), (5), (7) (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),
5 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing account.

6 **SECTION 69.** 108.151 (3) (b) of the statutes is renumbered 108.151 (3) (b) (intro.)
7 and amended to read:

8 108.151 (3) (b) (intro.) The department may terminate any election as of the
9 close of any calendar year if the department determines that ~~the~~ any of the following
10 applies:

11 1. The employer has failed to make the required reimbursement payments or,

12 3. The employer no longer satisfies the requirements of sub. (4), or whenever

13 s.

14 4. Section 108.16 (8) applies with respect to the employer.

15 **SECTION 70.** 108.151 (3) (b) 2. of the statutes is created to read:

16 108.151 (3) (b) 2. The employer has failed to pay the required assessments
17 authorized by sub. (7) or s. 108.155.

18 **SECTION 71.** 108.151 (4) (b) of the statutes is amended to read:

19 108.151 (4) (b) The fund's treasurer shall issue a receipt to the employer for its
20 deposit of assurance. Any assurances shall be retained by the fund's treasurer in
21 escrow, for the fund, until the employer's liability under its election is terminated,
22 at which time they shall be returned to the employer, less any deductions made under
23 this paragraph. The employer may at any time substitute assurances of equal or
24 greater value. The treasurer may, with 10 days' notice to the employer, liquidate the
25 assurances deposited to the extent necessary to satisfy any delinquent

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1 reimbursements or assessments due under this section or s. 108.155 together with
2 any interest and any tardy filing fees due. The treasurer shall hold in escrow any
3 cash remaining from the sale of the assurances, without interest. The fund's
4 treasurer shall require the employer within 30 days following any liquidation of
5 deposited assurances to deposit sufficient additional assurances to make whole the
6 employer's deposit at the prior level. Any income from assurances held in escrow
7 shall inure to and be the property of the employer.

8 **SECTION 72.** 108.152 (6) (a) (intro.) of the statutes is amended to read:

9 108.152 (6) (a) (intro.) If an Indian tribe or tribal unit fails to pay required
10 contributions, reimbursements in lieu of contributions, penalties, interest, or fees,
11 or assessments within 90 days of the time that the department transmits to the tribe
12 a final notice of delinquency:

13 **SECTION 73.** 108.155 of the statutes is created to read:

14 **108.155 Liability of reimbursable employers for identity theft.** (1) In
15 this section:

16 (a) "Payroll" has the meaning given in s. 108.02 (21) (a).

17 (b) "Reimbursable employer" means an employer under s. 108.02 (13) (a) that
18 is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

19 (2) (a) On the effective date of this paragraph [LRB inserts date], the fund's
20 treasurer shall set aside \$2,000,000 in the balancing account for accounting
21 purposes. On an ongoing basis, the fund's treasurer shall tally the amounts allocated
22 to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. and deduct those
23 amounts from the amount set aside plus any interest calculated thereon.

24 (b) On each June 30, beginning with June 30, 2016, the fund's treasurer shall
25 do all of the following:

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1 1. Determine the current result of the calculations described in par. (a).

2 2. Determine the amount that was allocated to reimbursable employers'
3 accounts under s. 108.04 (13) (d) 4. c. in the preceding calendar year.

4 (c) Annually, beginning with the first year in which the amount determined
5 under par. (b) 1. is less than \$100,000, the department shall proceed as follows:

6 1. If the sum of the amount determined under par. (b) 2. in the current year and
7 any amount carried over under subd. 2. or 3. from the preceding year is \$20,000 or
8 more, the department shall, subject to subd. 3., assess reimbursable employers for
9 that sum.

10 2. If the sum of the amount determined under par. (b) 2. in the current year and
11 any amount carried over under this subdivision or subd. 3. from the preceding year
12 is less than \$20,000 the department shall, subject to subd. 4., postpone the current
13 year's assessment by carrying that sum over to the following year.

14 3. If the sum of the amount determined under par. (b) 2. in the current year and
15 any amount carried over under this subdivision or subd. 2. from the preceding year
16 is more than \$200,000, the department shall postpone the amount of the assessment
17 that exceeds \$200,000 by carrying that amount over to the following year.

18 4. If the department postponed assessments under subd. 2. in each of the 4
19 previous years, the department shall, subject to subd. 3., assess reimbursable
20 employers for the sum of the amount determined under par. (b) 2. in the current year
21 and the amount carried over under subd. 2. from the preceding year.

22 (d) If the department assesses reimbursable employers under par. (c), the
23 department shall determine the amount of assessments to be levied as provided in
24 sub. (3), and the fund's treasurer shall notify reimbursable employers that the
25 assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall

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1 be payable by each reimbursable employer that is subject to this chapter as of the
2 date the assessment is imposed. Assessments imposed under this section shall be
3 credited to the balancing account.

4 (3) (a) The rate of an assessment imposed under sub. (2) (c) for a given calendar
5 year shall be a rate that, when applied to the payrolls of all reimbursable employers
6 for the preceding calendar year, will generate an amount equal to the total amount
7 to be assessed in that year as determined under sub. (2) (c).

8 (b) Except as provided in par. (c), the amount of a reimbursable employer's
9 assessment imposed under sub. (2) (c) for a given calendar year is the product of the
10 rate determined under par. (a) and the reimbursable employer's payroll for the
11 preceding calendar year, as reported by the reimbursable employer under s. 108.15
12 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated
13 by the department.

14 (c) If a reimbursable employer would otherwise be assessed an amount less
15 than \$10 for a calendar year, the department shall, in lieu of requiring that
16 reimbursable employer to pay an assessment for that calendar year, apply the
17 amount that the reimbursable employer would have been required to pay to the other
18 reimbursable employers subject to an assessment on a pro rata basis.

19 (4) The department shall bill assessments under this section to a reimbursable
20 employer at its last known address in the month of September of each year and the
21 assessment shall be due to the department within 20 days after the date such bill is
22 mailed by the department. Any assessment that remains unpaid after its applicable
23 due date is a delinquent payment. If a reimbursable employer is delinquent in
24 paying an assessment under this section, in addition to pursuing action under the
25 provisions of ss. 108.22 and 108.225, the department may do any of the following:

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1 (a) Pursue action authorized under s. 108.15 (6), if the reimbursable employer
2 is subject to reimbursement financing under s. 108.15.

3 (b) Terminate the reimbursable employer's election of reimbursement
4 financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s.
5 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under
6 s. 108.151 (2).

7 (c) Pursue action authorized under s. 108.152 (6), if the reimbursable employer
8 elected reimbursement financing under s. 108.152 (1).

9 (5) If the payroll of a reimbursable employer for any quarter is adjusted to
10 decrease the amount of the payroll after an employment and wage report for the
11 reimbursable employer is filed under s. 108.205 (1), the department shall refund the
12 amount of any assessment that was overpaid by the reimbursable employer under
13 this section as a result of the adjustment.

14 (6) The department shall annually report to the council on unemployment
15 insurance the balance remaining of the amount set aside under sub. (2) (a) and the
16 amount of charges restored to reimbursable employers' accounts under s. 108.04 (13)
17 (d) 4. c.

18 **SECTION 74.** 108.16 (6) (g) of the statutes is amended to read:

19 108.16 (6) (g) Any payment or other amount received for the balancing account
20 under s. 108.15 ~~or, 108.151, 108.152, or 108.155.~~

21 **SECTION 75.** 108.16 (6m) (i) of the statutes is created to read:

22 108.16 (6m) (i) Any amount restored to the account of an employer subject to
23 reimbursement financing under s. 108.04 (13) (d) 4.

24 **SECTION 76.** 108.16 (7m) of the statutes is amended to read:

BILL**SECTION 76**

1 108.16 (7m) The fund's treasurer may write off, by charging to the fund's
2 balancing account, any delinquent contribution, reimbursement in lieu of
3 contribution, assessment, tardy payment or filing fee, or interest for which the
4 employer's liability to the fund was established under s. 108.10, upon receipt of
5 certification by the department that reasonable efforts have been made to recover the
6 delinquency and that the delinquency is uncollectible.

7 **SECTION 77.** 108.16 (10) of the statutes, as affected by 2015 Wisconsin Act 86,
8 is amended to read:

9 108.16 (10) All money withdrawn from the fund shall be used solely in the
10 payment of benefits, exclusive of expenses of administration, and for refunds of sums
11 erroneously paid into the fund, for refund of a positive net balance in an employer's
12 reimbursement account under ss. 108.15 (4) and, 108.151 (5), and 108.152 (4) on
13 request by the employer, for expenditures made pursuant to s. 108.161 and
14 consistently with the federal limitations applicable to s. 108.161, and for payment
15 of fees and expenses for collection of overpayments resulting from fraud or failure to
16 report earnings that are assessed by the U.S. secretary of the treasury and charged
17 to the department under 26 USC 6402 (f).

18 **SECTION 78.** 108.18 (7) (a) 1. of the statutes is amended to read:

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

24 **SECTION 79.** 108.18 (7) (h) of the statutes is amended to read:

BILL

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

6 **SECTION 80.** 108.18 (9c) of the statutes is amended to read:

7 108.18 (9c) **REDUCTION OF SOLVENCY RATE.** The department shall reduce the
8 solvency rate payable under sub. (9) by each employer for each year by the ~~rate~~ rates
9 payable by that employer under s. 108.19 (1e) (a) ~~and (1f) (a)~~ for that year.

10 **SECTION 81.** 108.19 (title) of the statutes is repealed and recreated to read:

11 **108.19 (title) Contributions to administrative account and**
12 **unemployment interest payment and program integrity funds.**

13 **SECTION 82.** 108.19 (1f) of the statutes is created to read:

14 108.19 (1f) (a) Except as provided in par. (b), each employer, other than an
15 employer that finances benefits by reimbursement in lieu of contributions under s.
16 108.15, 108.151, or 108.152 shall, in addition to other contributions payable under
17 s. 108.18 and this section, pay an assessment for each year equal to the lesser of 0.01
18 percent of its payroll for that year or the solvency contribution that would otherwise
19 be payable by the employer under s. 108.18 (9) for that year. Assessments under this
20 paragraph shall be deposited in the unemployment program integrity fund.

21 (b) The levy prescribed under par. (a) is not effective for any year unless the
22 department, no later than the November 30 preceding that year, publishes a class
23 1 notice under ch. 985 giving notice that the levy is in effect for the ensuing year. The
24 department shall consider the balance of the unemployment reserve fund before
25 prescribing the levy under par. (a). The secretary of workforce development shall

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1 consult with the council on unemployment insurance before the department
2 prescribes the levy under par. (a).

3 (c) Notwithstanding par. (a), the department may, if it finds that the full
4 amount of the levy is not required to effect the purposes specified in sub. (1s) (b) for
5 any year, prescribe a reduced levy for that year and in such case shall publish in the
6 notice under par. (b) the rate of the reduced levy.

7 **SECTION 83.** 108.19 (1m) of the statutes, as affected by 2013 Wisconsin Act 20,
8 section 1720q, is amended to read:

9 108.19 (1m) Each employer subject to this chapter as of the date a rate is
10 established under this subsection shall pay an assessment to the unemployment
11 interest payment fund at a rate established by the department sufficient to pay
12 interest due on advances from the federal unemployment account under Title XII of
13 the social security act (42 USC 1321 to 1324). The rate established by the department
14 for employers who finance benefits under s. 108.15 (2), 108.151 (2), or 108.152 (1)
15 shall be ~~75%~~ 75 percent of the rate established for other employers. The amount of
16 any employer's assessment shall be the product of the rate established for that
17 employer multiplied by the employer's payroll of the previous calendar year as taken
18 from quarterly employment and wage reports filed by the employer under s. 108.205
19 (1) or, in the absence of the filing of such reports, estimates made by the department.
20 Each assessment made under this subsection is due on the 30th day commencing
21 after the date on which notice of the assessment is mailed by the department. If the
22 amounts collected from employers under this subsection are in excess of the amounts
23 needed to pay interest due, the department shall use any excess to pay interest owed
24 in subsequent years on advances from the federal unemployment account. If the
25 department determines that additional interest obligations are unlikely, the

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1 department shall transfer the excess to the balancing account of the fund, the
2 unemployment program integrity fund, or both in amounts determined by the
3 department.

4 **SECTION 84.** 108.19 (1s) (a) of the statutes, as affected by 2015 Wisconsin Act
5 55, is renumbered 108.19 (1s) (a) (intro.) and amended to read:

6 108.19 (1s) (a) (intro.) There is created a separate, nonlapsible trust fund
7 designated as the unemployment program integrity fund consisting of all of the
8 following:

9 1. All amounts collected under s. 108.04 (11) (bh) other than the amounts
10 required to be deposited in the fund under s. 108.16 (6) (n).

11 **SECTION 85.** 108.19 (1s) (a) 2. of the statutes is created to read:

12 108.19 (1s) (a) 2. Assessments levied and deposited into the unemployment
13 program integrity fund under sub. (1f).

14 **SECTION 86.** 108.19 (1s) (a) 3. of the statutes is created to read:

15 108.19 (1s) (a) 3. Amounts transferred under sub. (1m).

16 **SECTION 87.** 108.19 (1s) (a) 4. of the statutes is created to read:

17 108.19 (1s) (a) 4. Assessments under s. 108.221 (1) and (2).

18 **SECTION 88.** 108.22 (1) (b) of the statutes is amended to read:

19 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),
20 108.151 (5) (f) or (7), ~~108.155~~, 108.16 (8), 108.17, or 108.205 would otherwise be a
21 Saturday, Sunday, or legal holiday under state or federal law, the due date is the next
22 following day which is not a Saturday, Sunday, or legal holiday under state or federal
23 law.

24 **SECTION 89.** 108.22 (1) (c) of the statutes is amended to read:

BILL**SECTION 89**

1 108.22 (1) (c) Any report or payment, except a payment required by s. 108.15
2 (5) (b) ~~or~~, 108.151 (5) (f) or (7), or 108.155, to which this subsection applies is
3 delinquent, within the meaning of par. (a), unless it is received by the department,
4 in the form prescribed by law or rule of the department, no later than its due date
5 as determined under par. (b). Any payment required by s. 108.15 (5) (b) ~~or~~, 108.151
6 (5) (f) or (7), or 108.155 is delinquent, within the meaning of par. (a), unless it is
7 received by the department, in the form prescribed by law, no later than the last day
8 of the month in which it is due.

9 **SECTION 90.** 108.22 (1m) of the statutes is amended to read:

10 108.22 (1m) If an employer owes any contributions, reimbursements, or
11 assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or
12 payments for forfeitures or other penalties to the department under this chapter and
13 fails to pay the amount owed, the department has a perfected lien upon the
14 employer's right, title, and interest in all of its real and personal property located in
15 this state in the amount finally determined to be owed, plus costs. Except where
16 creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien
17 is effective when the department issues a determination of the amount owed under
18 s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the
19 date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other
20 insolvency law, it shall become effective immediately upon expiration or removal of
21 such bar or stay. The perfected lien does not give the department priority over
22 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
23 whose interests have been recorded before the department's lien is recorded.

24 **SECTION 91.** 108.22 (9) of the statutes is amended to read:

BILL

1 108.22 (9) An individual who is an officer, employee, member ~~or~~, manager,
2 partner, or other responsible person holding at least ~~20%~~ 20 percent of the ownership
3 interest of a corporation ~~or of a~~, limited liability company, or other business
4 association subject to this chapter, and who has control or supervision of or
5 responsibility for filing any required contribution reports or making payment of
6 contributions, and who willfully fails to file such reports or to make such payments
7 to the department, or to ensure that such reports are filed or that such payments are
8 made, may be found personally liable for such amounts, including interest, tardy
9 payment or filing fees, costs and other fees, in the event that after proper proceedings
10 for the collection of such amounts, as provided in this chapter, the corporation ~~or~~,
11 limited liability company, or other business association is unable to pay such
12 amounts to the department. Ownership interest of a corporation ~~or~~, limited liability
13 company, or other business association includes ownership or control, directly or
14 indirectly, by legally enforceable means or otherwise, by the individual, by the
15 individual's spouse or child, by the individual's parent if the individual is under age
16 18, or by a combination of 2 or more of them, and such ownership interest of a parent
17 corporation ~~or~~, limited liability company, or other business association of which the
18 corporation ~~or~~, limited liability company, or other business association unable to pay
19 such amounts is a wholly owned subsidiary. The personal liability of such officer,
20 employee, member ~~or~~, manager, partner, or other responsible person as provided in
21 this subsection survives dissolution, reorganization, bankruptcy, receivership,
22 assignment for the benefit of creditors, judicially confirmed extension or
23 composition, or any analogous situation of the corporation ~~or~~, limited liability
24 company, or other business association and shall be set forth in a determination or
25 decision issued under s. 108.10.

BILL

1 **SECTION 92.** 108.221 of the statutes is created to read:

2 **108.221 Misclassification; administrative assessments.** (1) (a) Any
3 employer described in s. 108.18 (2) (c) or engaged in the painting or drywall finishing
4 of buildings or other structures who knowingly and intentionally provides false
5 information to the department for the purpose of misclassifying or attempting to
6 misclassify an individual who is an employee of the employer as a nonemployee shall,
7 for each incident, be assessed a penalty by the department in the amount of \$500 for
8 each employee who is misclassified, but not to exceed \$7,500 per incident.

9 (b) The department shall consider the following nonexclusive factors in
10 determining whether an employer described under par. (a) knowingly and
11 intentionally provided false information to the department for the purpose of
12 misclassifying or attempting to misclassify an individual who is an employee of the
13 employer as a nonemployee:

14 1. Whether the employer was previously found to have misclassified an
15 employee in the same or a substantially similar position.

16 2. Whether the employer was the subject of litigation or a governmental
17 investigation relating to worker misclassification and the employer, as a result of
18 that litigation or investigation, received an opinion or decision from a federal or state
19 court or agency that the subject position or a substantially similar position should
20 be classified as an employee.

21 (2) Any employer described in s. 108.18 (2) (c) or engaged in the painting or
22 drywall finishing of buildings or other structures who, through coercion, requires an
23 individual to adopt the status of a nonemployee shall be assessed a penalty by the
24 department in the amount of \$1,000 for each individual so coerced, but not to exceed
25 \$10,000 per calendar year.

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1 (3) Assessments under subs. (1) and (2) shall be deposited in the
2 unemployment program integrity fund.

3 **SECTION 93.** 108.225 (1) (a) of the statutes is amended to read:

4 108.225 (1) (a) “Contribution” includes a reimbursement or assessment under
5 s. 108.15, 108.151, ~~or 108.152~~, or 108.155, interest for a nontimely payment, fees, and
6 any payment due for a forfeiture imposed upon an employing unit under s. 108.04
7 (11) (c) or other penalty assessed by the department under this chapter.

8 **SECTION 94.** 108.24 (2m) of the statutes is amended to read:

9 108.24 (2m) Any employer described in s. 108.18 (2) (c) or engaged in the
10 painting or drywall finishing of buildings or other structures who ~~willfully~~, after
11 having previously been assessed an administrative penalty by the department under
12 s. 108.221 (1), knowingly and intentionally provides false information to the
13 department for the purpose of misclassifying or attempting to misclassify an
14 individual who is an employee of the employer as a nonemployee shall be fined \$1,000
15 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each
16 violation. The department may refer violations of this subsection for prosecution by
17 the department of justice or the district attorney for the county in which the violation
18 occurred.

19 **SECTION 95.** 111.327 of the statutes is repealed.

20 **SECTION 96.** 2011 Wisconsin Act 198, section 4m is repealed.

21 **SECTION 97.** 2011 Wisconsin Act 198, section 6m is repealed.

22 **SECTION 98.** 2011 Wisconsin Act 198, section 37m is repealed.

23 **SECTION 99.** 2011 Wisconsin Act 198, section 47m (1), as last affected by 2013
24 Wisconsin Act 36, is repealed.

25 **SECTION 100.** 2013 Wisconsin Act 36, section 236m is repealed.

BILL**1 SECTION 101. Nonstatutory provisions.**

2 (1) UNEMPLOYMENT INSURANCE; REPEAL OF PROGRAM INTEGRITY FUND SUNSET. The
3 repeal of 2011 Wisconsin Act 198, sections 4m, 6m, 37m, and 47m (1) and 2013
4 Wisconsin Act 36, section 236m applies notwithstanding section 990.03 of the
5 statutes.

6 SECTION 102. Initial applicability.

7 (1) CONCEALMENT BY CLAIMANTS. The renumbering and amendment of section
8 108.04 (11) (g) of the statutes and the creation of section 108.04 (11) (g) 2. and 3. of
9 the statutes first apply to determinations issued under section 108.09 of the statutes
10 on the effective date of this subsection.

11 (2) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section
12 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes first applies
13 retroactively to determinations issued under section 108.09 of the statutes on the
14 effective date of this subsection.

15 (3) JUDICIAL REVIEW CHANGES. The treatment of sections 108.09 (4o), (7) (a), (b),
16 and (c) to (h) and 108.10 (4) of the statutes first applies to actions filed on the effective
17 date of this subsection.

18 (4) ABLE AND AVAILABLE DETERMINATIONS. The treatment of sections 108.04 (1)
19 (b) and (bm), (7) (c), (cg), and (h), (8) (e), and (16) (b), 108.14 (8n) (e), and 108.141 (7)
20 (a) of the statutes first applies to determinations issued under section 108.09 of the
21 statutes on the effective date of this subsection.

22 (5) PERSONAL LIABILITY OF LLP PARTNERS. The treatment of section 108.22 (9)
23 of the statutes first applies to determinations issued under section 108.10 of the
24 statutes on the effective date of this subsection.

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1 (6) **SUITABLE WORK.** The treatment of section 108.04 (7) (e) and (8) (c), (dm), and
2 (em) of the statutes, the renumbering and amendment of section 108.04 (8) (d) of the
3 statutes, and the creation of section 108.04 (8) (d) 2. of the statutes first apply to
4 determinations issued under section 108.09 of the statutes on the effective date of
5 this subsection.

6 (7) **RECEIPT OF WORKER'S COMPENSATION.** The treatment of section 108.04 (12) (e)
7 of the statutes first applies to determinations issued under section 108.09 of the
8 statutes on the effective date of this subsection.

9 (8) **MISCLASSIFICATION; ASSESSMENTS AND PENALTIES.** The treatment of sections
10 102.07 (8) (d), 108.221, 108.24 (2m), and 111.327 of the statutes first applies to
11 violations committed on the effective date of this subsection.

12 **SECTION 103. Effective dates.** This act takes effect on the first Sunday after
13 publication, except as follows:

14 (1) **CONCURRENT RECEIPT OF SSDI AND UI BENEFITS.** The treatment of section
15 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes and SECTION
16 102 (2) of this act take effect retroactively to January 5, 2014.

17 (2) **REIMBURSABLE EMPLOYER IDENTITY THEFT CHARGING.** The treatment of
18 sections 108.02 (21) (b), 108.04 (13) (d) 3. (intro.) and a. and 4. (intro.), a., and c.,
19 108.151 (4) (b), 108.152 (6) (a) (intro.), 108.155, 108.16 (6) (g), (6m) (i), (7m), and (10),
20 108.22 (1) (b) and (c) and (1m), and 108.225 (1) (a) of the statutes, the renumbering
21 and amendment of section 108.151 (3) (b) of the statutes, and the creation of section
22 108.151 (3) (b) 2. of the statutes take effect on October 2, 2016.

23 (3) **JUDICIAL REVIEW CHANGES.** The treatment of sections 108.09 (4o), (7) (a), (b),
24 and (c) to (h) and 108.10 (4) of the statutes and SECTION 102 (3) of this act take effect
25 on the first day of the 5th month beginning after publication.

Rose, Stefanie

From: Knutson, Janell - DWD <Janell.Knutson@dwd.wisconsin.gov>
Sent: Tuesday, January 19, 2016 2:47 PM
To: LRB.Legal
Cc: Evenson, Andrew J - DWD; Tichenor, Tyler L - DWD
Subject: Draft Review: LRB -4497/1

Please call Andrew Evenson when it is ready for pickup 266-1756
Please Jacket LRB -4497/1 for the SENATE.