

**2015 DRAFTING REQUEST**

**Bill**

Received: **3/19/2015** Received By: **mduchek**  
For: **Workforce Development** Same as LRB: **-4497**  
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**Pre Topic:**

No specific pre topic given

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**Topic:**

Various changes to UI law

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 4/6/2015	csicilia 4/9/2015	_____			
/P1	mduchek 5/4/2015	csicilia 5/5/2015	_____	srose 4/9/2015		
/P2	mduchek 5/13/2015	csicilia 5/15/2015	_____	sbasford 5/5/2015		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3	mduchek 5/27/2015	anienaja 6/1/2015	_____	srose 5/15/2015		State
/P4	mduchek 6/15/2015	csicilia 6/15/2015	_____	lparisi 6/1/2015		State
/P5	mduchek 8/31/2015	eweiss 9/1/2015	_____	sbasford 6/15/2015		State
/P6	mduchek 10/23/2015	csicilia 10/26/2015	_____	sbasford 9/1/2015		State
/P7	mduchek 11/10/2015	csicilia 11/11/2015	_____	mbarman 10/26/2015		State
/P8	mduchek 12/18/2015	wjackson 12/23/2015	_____	mbarman 11/11/2015		State
/P9	mduchek 1/19/2016	wjackson 12/23/2015	_____	srose 12/23/2015		State
/1		wjackson 1/19/2016	_____	srose 1/19/2016	srose 1/19/2016	State

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electronic copy is still in "drafting" — but type this

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## Nonsubmittal Form

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State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-2020/19  
MED:all

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 AN ACT *to repeal* 108.04 (8) (e), 108.05 (1) (q), 108.05 (1) (r) (figure), 108.05 (2)  
2 and 108.05 (2m); *to renumber and amend* 108.04 (11) (g), 108.04 (12) (f) 1.,  
3 108.04 (12) (f) 2., 108.09 (7) (d), 108.151 (3) (b) and 108.19 (1s) (a); *to amend*  
4 108.02 (13) (k), 108.02 (21) (b), 108.04 (1) (bm), 108.04 (2) (h), 108.04 (7) (c),  
5 108.04 (7) (h), 108.04 (13) (d) 3. (intro.) and a., 108.04 (13) (d) 4. (intro.) and a.,  
6 108.04 (16) (b), 108.05 (1) (r), 108.09 (4o), 108.09 (7) (a) and (b), 108.10 (4),  
7 108.14 (8n) (e), 108.141 (4), 108.141 (7) (a), 108.151 (4) (b), 108.152 (6) (a)  
8 (intro.), 108.16 (6) (g), 108.16 (7m), 108.16 (10), 108.18 (7) (a) 1., 108.18 (7) (h),  
9 108.18 (9c), 108.19 (1m), 108.22 (1) (b), 108.22 (1) (c), 108.22 (1m), 108.22 (9) and  
10 108.225 (1) (a); *to repeal and recreate* 108.04 (1) (b) and 108.19 (title); *to*  
11 *create* 108.04 (7) (cg), 108.04 (11) (g) 2. and 3., 108.04 (12) (f) 1m., 108.04 (12)  
12 (f) 2m., 108.04 (12) (f) 3. b. to d., 108.04 (13) (d) 4. c., 108.09 (7) (c) to (h), 108.151  
13 (3) (b) 2., 108.155, 108.16 (6m) (i), 108.19 (1f), 108.19 (1s) (a) 2. and 108.19 (1s)  
14 (a) 3. of the statutes; and *to affect* 2011 Wisconsin Act 198, section 4m, 2011  
15 Wisconsin Act 198, section 6m, 2011 Wisconsin Act 198, section 37m, 2011

1 Wisconsin Act 198, section 47m (1) and 2013 Wisconsin Act 36, section 236m;  
2 **relating to:** various changes to the unemployment insurance law.

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

This bill makes various changes in the unemployment insurance law, which is administered by the Department of Workforce Development. Significant changes include:

#### **EMPLOYERS, CONTRIBUTIONS, AND FINANCE**

##### ***Program integrity assessment***

Currently, all employers that engage employees in work that is covered under UI, other than governmental, nonprofit, and Indian tribal employers that elect to pay directly for the cost of benefits, must pay taxes to finance UI benefits. An employer's contributions are assessed based on the employer's contribution rate and the employer's solvency rate, each of which varies with the employment stability of the employer and the solvency of the state's unemployment reserve fund. An employer's contributions payable as a result of the employer's contribution rate are credited to the employer's account in the fund, while an employer's contributions payable as a result of the employer's solvency rate are credited to the fund's balancing account, which is used to fund benefits not payable from any employer's account.

In addition to these contributions, this bill levies an annual assessment on each employer that is currently subject to a contribution requirement in the amount of 0.01 percent (or a lower rate if prescribed by DWD) of an employer's taxable payroll for each year, unless the employer is not required to pay a solvency contribution. An assessed employer's solvency rate is then reduced by the amount of the assessment rate. The levy is not effective for any year unless DWD, no later than the November 30 preceding that year, publishes a class 1 notice giving notice that the levy is in effect for the ensuing year. DWD must consider the balance of the state's unemployment reserve fund before prescribing the levy, and the secretary of workforce development must consult with the Council on Unemployment Insurance before DWD prescribes a levy. Under the bill, assessments are deposited in the unemployment program integrity fund and must therefore, as provided under current law, be used for payment of costs associated with program integrity activities.

##### ***Transfer of moneys from the unemployment interest payment fund***

Under current law, an employer must pay an assessment to the state unemployment interest payment fund at a rate established by DWD that is sufficient to pay interest due on advances from the federal government from the federal unemployment account in the federal unemployment trust fund. Such advances are made when the state's unemployment reserve fund is depleted. If the assessments collected are in excess of the amounts needed to pay interest due, DWD must use any excess to pay interest owed in subsequent years on advances from the federal unemployment account. However, if DWD determines that additional interest

obligations are unlikely, DWD must transfer the excess to the unemployment reserve fund's balancing account.

This bill instead provides that DWD must transfer the excess in the state unemployment interest payment fund to the balancing account, the unemployment program integrity fund, or both in amounts determined by DWD.

***Charging of benefits financed by reimbursable employers in cases of identity theft***

Under current law, UI benefits are financed by employers in one of two ways:

1. Through contribution financing, under which an account in the state's unemployment reserve fund is maintained for an employer; the employer pays contributions, which are deposited into that account in the fund; and benefits for employees of the employer who file claims for UI benefits are generally financed by that employer's account in the fund. Such employers must additionally pay solvency contributions, which are credited to the fund's balancing account.

2. Through reimbursement financing, under which an employer reimburses the fund directly for benefits for employees of the employer who file claims for UI benefits. Reimbursable financing is available only to public employers, nonprofit organizations, and Indian tribes. In the case of reimbursement financing, DWD maintains a reimbursement "employer account" for each employer as a "subaccount" of the fund's balancing account.

Current law provides that if benefits charged to the account of an employer subject to contribution financing have been erroneously paid to an employee without fault by the employer, DWD must, to correct the payment if not otherwise adjusted, restore the proper amount to the employer's account in the fund and charge that amount to the fund's balancing account. With respect to employers subject to reimbursement financing, however, current law does provide for restoring the proper amount to the employer's account and charging that amount to the fund's balancing account. These provisions in current law do not distinguish between instances in which benefit payments are erroneously paid to an employee who received the payments and instances in which the erroneous payment resulted from a false statement or representation about an individual's identity (i.e., cases of identity theft in which a third party, and not the employee, receives the benefit payments).

This bill provides that, with respect to UI benefits financed by an employer subject to reimbursement financing, if an erroneous payment of UI benefits results from a false statement or representation about an individual's identity and the employer was not at fault for the erroneous payment, DWD must restore the proper amount to the employer's account in the balancing account.

In addition, the bill requires DWD to do all of the following:

1. Set aside \$2,000,000 in the fund's balancing account for accounting purposes and, on an ongoing basis, tally the amounts restored to reimbursable employers' accounts as provided under the bill and deduct those amounts from the amount set aside plus any interest calculated thereon.

2. Annually determine the amount remaining of the amount set aside plus interest and the amount restored to reimbursable employers' accounts as provided under the bill in the preceding calendar year.

3. Once there is less than \$100,000 remaining of the amount set aside plus interest, begin proportionally assessing reimbursable employers for the total amount restored to reimbursable employers' accounts as provided under the bill in the preceding calendar year, subject to certain exceptions as specified in the bill. DWD may pursue recovery of unpaid assessments as with other amounts.

The bill requires DWD to annually report to the Council on Unemployment Insurance the amount remaining of the amount set aside and the amount restored to reimbursable employers' accounts as provided under the bill in the preceding calendar year.

### ***Personal liability of partners in LLCs and others for UI contributions***

Current law allows DWD, in certain circumstances, to hold an individual who is an officer, employee, member, or manager holding at least 20 percent of the ownership interest of a corporation or of a limited liability company personally liable for UI contributions and certain other amounts. This bill adds partners and other responsible persons to the list of persons who may be held personally liable, and allows such a person to be held liable if the person has a 20 percent ownership interest in other forms of business associations, as well as corporations and LLCs.

### ***Repeal of program integrity fund sunset***

2013 Wisconsin Act 36 provided for the sunset (repeal) of the establishment of the program integrity fund and related provisions, effective January 1, 2034.

This bill repeals the sunset of the program integrity fund and related provisions so that the program integrity fund and related provisions will continue to exist beyond January 1, 2034.

### ***Fiscal agent for child not an employer***

Under current law, a person receiving certain long-term support services through a county department or aging unit may be provided the services of a fiscal agent, either from the county department or aging unit or through a fiscal intermediary with which the county department or aging unit contracts. The fiscal agent is responsible for complying with the person's duties as an employer under the UI law. However, current law specifies that, for the purposes of the UI law, a county department or aging unit that serves as a fiscal agent or contracts with a fiscal intermediary is not considered an employer as to an individual performing services for the person receiving those long-term support services. 2015 Wisconsin Act 55 also provides for such fiscal agent services for a child or a child's parent if the child receives community support services through a county department under the children's community options program. This bill also excludes from the definition of employer under the UI law such a county department that serves as a fiscal agent or that contracts with a fiscal intermediary under the children's community options program.

## **BENEFITS AND BENEFIT CLAIMS**

### ***Concealment by claimants***

Under current law, if a claimant for UI benefits conceals any material fact relating to his or her eligibility for UI benefits or conceals any of his or her wages or hours worked, the claimant is ineligible for benefits in an amount ranging from to

two to eight times the claimant's weekly benefit rate, depending on the number of acts of concealment committed, for each single act of concealment, and is also liable for an additional administrative penalty. For purposes of these provisions, current law defines "conceal" to mean intentionally misleading or defrauding DWD by withholding or hiding information or making a false statement or misrepresentation. This bill does the following with respect to acts of concealment by claimants for UI benefits:

1. Deletes the reference to defrauding DWD from the definition of "conceal," so that "conceal" is defined as intentionally misleading DWD by withholding or hiding information or making a false statement or misrepresentation.

2. Provides that a claimant has a duty of care to provide an accurate and complete response to each inquiry made by DWD in connection with his or her receipt of UI benefits. In addition, the bill requires DWD, in determining whether a claimant intended to mislead DWD, to consider various factors specified in the bill as well as any other factor that may provide evidence of the claimant's intent.

3. Specifically provides that, when making a finding of concealment, DWD is not required to determine or prove that a claimant had an intent or design to receive UI benefits to which the claimant knows he or she was not entitled.

***Concurrent receipt of UI and SSDI***

Current law provides that any individual who actually receives social security disability insurance (SSDI) benefits in a given week is ineligible for UI benefits paid or payable in that same week.

This bill modifies current law with respect to the concurrent receipt of UI and SSDI benefits. Specifically, the bill provides that an individual is ineligible for UI benefits for each week in a month in which an SSDI payment is issued to the individual, but subject to the following: 1) in the first month an SSDI payment is first issued to an individual, the individual is ineligible for UI benefits for each week beginning with the week the SSDI payment is issued to the individual and for all subsequent weeks in that month; 2) following a cessation of SSDI payments to an individual and upon the individual again being issued an SSDI payment, the individual is ineligible for UI benefits for each week beginning with the week the SSDI payment is issued to the individual and all subsequent weeks in that month; and 3) following cessation of SSDI payments, the individual may be eligible for UI benefits, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final SSDI payment.

The bill provides that the modifications take effect retroactively to January 5, 2014.

**ADMINISTRATION, ADMINISTRATIVE REVIEW, AND OTHER CHANGES**

***Judicial review of UI decisions made by LIRC***

(ALJs)

Under current law, initial determinations regarding UI matters are made by DWD. Those determinations may be appealed to appeal tribunals, and a tribunal's decision may be appealed to the Labor and Industry Review Commission. A decision of LIRC may then be appealed to circuit court. Under current law, judicial review of UI decisions is largely governed by the judicial review provisions in the worker's compensation law.

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4. are similar to the provisions under the worker's compensation law that currently apply but also

The bill establishes similar but distinct provisions for the judicial review of UI decisions, which include 1) that DWD or any party may commence an action for the judicial review of a LIRC UI decision, but that DWD is not required to exhaust its available remedies in order to commence an action; 2) expressly providing that DWD must be a party in all actions for judicial review of UI decisions, including benefit cases; 3) that, unless the parties agree otherwise, proceedings for the judicial review of a LIRC UI decision must be brought in the circuit court for the county where the plaintiff resides, except that if the plaintiff is DWD, the proceedings must be brought in the circuit court for the county where a defendant that is not LIRC resides; and 4) requiring LIRC to transmit the record of proceedings to the circuit court within 60 days after making an appearance.

***Revisions to provisions concerning ability to work and availability for work***

As a general qualifying requirement to receive UI benefits, current law provides that, subject to certain exceptions, a claimant is eligible for UI benefits as to any given week only if the claimant is able to work and available for work during that week. The bill eliminates other, duplicative language in the UI law that similarly provides that a claimant is ineligible for UI benefits while unable to work or unavailable for work.

Also under current law, unless an exemption applies, if a claimant voluntarily terminates his or her work with an employer, the claimant is generally ineligible to receive benefits until certain requalification requirements are satisfied. One such exemption applies if the claimant terminated his or her work but had no reasonable alternative because he or she was unable to do his or her work, or if the claimant terminated his or her work because of the verified illness or disability of an immediate family member that reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave. The exemption further provides that if the claimant is unable to work or unavailable for work, he or she is ineligible to receive benefits while such inability or unavailability continues. The bill 1) eliminates the duplicative language providing that the claimant is ineligible for UI benefits while unable to work or unavailable for work; and 2) divides the exemption into two separate exemptions, one of which applies if the claimant terminated his or her work but had no reasonable alternative because of the verified illness or disability of the employee, and another which applies if the claimant terminated his or her work because of the verified illness or disability of an immediate family member and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

***Elimination of statutory benefit rate tables and adjustment language***

Under current law, UI weekly benefit rate schedules are published in the statutes. The schedules illustrate the results of the formula for calculating weekly benefit amounts and establish minimum and maximum weekly benefit rates. Current law requires DWD to adjust the minimum and maximum weekly benefit rates, but a separate provision indefinitely suspends this adjustment requirement.

This bill repeals the UI benefit rate schedules contained in the statutes showing the results of the formula for calculating weekly benefit amounts and instead

requires DWD to publish and maintain such schedules on its Internet site. The bill maintains the minimum and maximum weekly benefit rate amounts as currently established in the schedules. The bill repeals the provisions requiring adjustment of benefit amounts and the provision suspending those provisions.

For further information see the *state* 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 (13) (k) of the statutes is amended to read:

2           108.02 (13) (k) “Employer” does not include a county department, an aging  
3           unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts  
4           with a fiscal intermediary to serve as a fiscal agent under s. 46.27 (5) (i), 46.272 (7)  
5           (e), or 47.035 as to any individual performing services for a person receiving  
6           long-term support services under s. 46.27 (5) (b), 46.272 (7) (b), 46.275, 46.277,  
7           46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services  
8           under s. 47.02 (6) (c).

9           **SECTION 2.** 108.02 (21) (b) of the statutes is amended to read:

10           108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s.~~ ss. 108.151  
11           (7) (a) and 108.155 (1) (a), an employer’s payroll for calendar years prior to 2009  
12           includes only the first \$10,500 of wages paid by an employer to an individual during  
13           each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000  
14           of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of  
15           such wages, and for calendar years after 2012 includes only the first \$14,000 of such  
16           wages, including any wages paid for any work covered by the unemployment  
17           insurance law of any other state, except as authorized in s. 108.17 (5).

18           **SECTION 3.** 108.04 (1) (b) of the statutes is repealed and recreated to read:

1           108.04 (1) (b) Except as provided in s. 108.062 (10), if an employee is absent  
2 from work for 16 hours or less in the first week of his or her leave of absence or in the  
3 week in which his or her employment is suspended or terminated due to the  
4 employee's unavailability for work with the employer or inability to perform suitable  
5 work otherwise available with the employer, the employee's eligibility for benefits for  
6 that week shall be determined under par. (bm).

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

8           108.04 (1) (bm) For purposes of ~~par. pars.~~ (a) 1. and (b) 2., the department shall  
9 treat the amount that the employee would have earned as wages for a given week in  
10 available work as wages earned by the employee and shall apply the method  
11 specified in s. 108.05 (3) (a) to compute the benefits payable to the employee. The  
12 department shall estimate wages that an employee would have earned if it is not  
13 possible to compute the exact amount of wages that would have been earned by the  
14 employee.

15           **SECTION 5.** 108.04 (2) (h) of the statutes is amended to read:

16           108.04 (2) (h) A claimant shall, when the claimant first files a claim for benefits  
17 under this chapter and during each subsequent week the claimant files for benefits  
18 under this chapter, inform the department whether he or she is receiving social  
19 security disability insurance ~~benefits under 42 USC ch. 7 subch. II payments, as~~  
20 defined in sub. (12) (f) 2m.

21           **SECTION 6.** 108.04 (7) (c) of the statutes is amended to read:

22           108.04 (7) (c) Paragraph (a) does not apply if the department determines that  
23 the employee terminated his or her work but had no reasonable alternative because  
24 ~~the employee was unable to do his or her work, or that the employee terminated his~~  
25 ~~or her work~~ because of the verified illness or disability of ~~a member of his or her~~

1 ~~immediate family and the verified illness or disability reasonably necessitates the~~  
2 ~~care of the family member for a period of time that is longer than the employer is~~  
3 ~~willing to grant leave; but if the department determines that the employee is unable~~  
4 ~~to work or unavailable for work, the employee is ineligible to receive benefits while~~  
5 ~~such inability or unavailability continues~~ the employee.

6 **SECTION 7.** 108.04 (7) (cg) of the statutes is created to read:

7 108.04 (7) (cg) Paragraph (a) does not apply if the department determines that  
8 the employee terminated his or her work because of the verified illness or disability  
9 of a member of his or her immediate family and the verified illness or disability  
10 reasonably necessitates the care of the family member for a period of time that is  
11 longer than the employer is willing to grant leave.

12 **SECTION 8.** 108.04 (7) (h) of the statutes is amended to read:

13 108.04 (7) (h) The department shall charge to the fund's balancing account  
14 benefits paid to an employee that are otherwise chargeable to the account of an  
15 employer that is subject to the contribution requirements of ss. 108.17 and 108.18  
16 if the employee voluntarily terminates employment with that employer and par. (a),  
17 (c), ~~(cg)~~, (e), (L), (q), (s), or (t) applies.

18 **SECTION 9.** 108.04 (8) (e) of the statutes is repealed.

19 **SECTION 10.** 108.04 (11) (g) of the statutes is renumbered 108.04 (11) (g) 1. and  
20 amended to read:

21 108.04 (11) (g) 1. ~~For purposes of~~ In this subsection, "conceal" means to  
22 intentionally mislead ~~or defraud~~ the department by withholding or hiding  
23 information or making a false statement or misrepresentation.

24 **SECTION 11.** 108.04 (11) (g) 2. and 3. of the statutes are created to read:

1           108.04 (11) (g) 2. A claimant has a duty of care to provide an accurate and  
2 complete response to each inquiry made by the department in connection with his  
3 or her receipt of benefits. The department shall consider the following factors in  
4 determining whether a claimant intended to mislead the department as described  
5 in subd. 1.:

6           a. Whether the claimant failed to read or follow instructions or other  
7 communications of the department related to a claim for benefits.

8           b. Whether the claimant relied on the statements or representations of persons  
9 other than an employee of the department who is authorized to provide advice  
10 regarding the claimant's claim for benefits.

11           c. Whether the claimant has a limitation or disability and, if so, whether the  
12 claimant provided evidence to the department of that limitation or disability.

13           d. The claimant's unemployment insurance claims filing experience.

14           e. Any instructions or previous determinations of concealment issued or  
15 provided to the claimant.

16           f. Any other factor that may provide evidence of the claimant's intent.

17           3. Nothing in this subsection requires the department, when making a finding  
18 of concealment, to determine or prove that a claimant had an intent or design to  
19 receive benefits to which the claimant knows he or she was not entitled.

20           **SECTION 12.** 108.04 (12) (f) 1. of the statutes is renumbered 108.04 (12) (f) 3.

21           a. and amended to read:

22           108.04 (12) (f) 3. a. ~~Any~~ Except as provided in subd. 3. b. to d., an individual  
23 ~~who actually receives social security disability insurance benefits under 42 USC ch.~~  
24 ~~7 subch. II in a given week is ineligible for benefits paid or payable in that same week~~

1 under this chapter for each week in the entire month in which a social security  
2 disability insurance payment is issued to the individual.

3 **SECTION 13.** 108.04 (12) (f) 1m. of the statutes is created to read:

4 108.04 (12) (f) 1m. The intent of the legislature in enacting this paragraph is  
5 to prevent the payment of duplicative government benefits for the replacement of lost  
6 earnings or income, regardless of an individual's ability to work.

7 **SECTION 14.** 108.04 (12) (f) 2. of the statutes is renumbered 108.04 (12) (f) 4.  
8 and amended to read:

9 108.04 (12) (f) 4. Information that the department receives or acquires from the  
10 federal social security administration ~~that an individual is receiving~~ regarding the  
11 issuance of social security disability insurance benefits under 42 USC ch. 7 subch.  
12 II in a given week payments is considered conclusive, absent clear and convincing  
13 evidence that the information was erroneous.

14 **SECTION 15.** 108.04 (12) (f) 2m. of the statutes is created to read:

15 108.04 (12) (f) 2m. In this paragraph, "social security disability insurance  
16 payment" means a payment of social security disability insurance benefits under 42  
17 USC ch. 7 subch. II.

18 **SECTION 16.** 108.04 (12) (f) 3. b. to d. of the statutes are created to read:

19 108.04 (12) (f) 3. b. In the first month a social security disability insurance  
20 payment is first issued to an individual, the individual is ineligible for benefits under  
21 this chapter for each week beginning with the week the social security disability  
22 insurance payment is issued to the individual and all subsequent weeks in that  
23 month.

24 c. Following a cessation of social security disability insurance payments to an  
25 individual and upon the individual again being issued a social security disability

1 insurance payment, the individual is ineligible for benefits under this chapter for  
2 each week beginning with the week the social security disability insurance payment  
3 is issued to the individual and all subsequent weeks in that month.

4 d. Following cessation of social security disability insurance payments, an  
5 individual may be eligible for benefits under this chapter, if otherwise qualified,  
6 beginning with the week following the last Saturday of the month in which the  
7 individual is issued his or her final social security disability insurance payment.

8 **SECTION 17.** 108.04 (13) (d) 3. (intro.) and a. of the statutes are amended to read:

9 108.04 (13) (d) 3. (intro.) To correct any erroneous payment not so adjusted that  
10 was charged to the account of an employer that is subject to the contribution  
11 requirements of ss. 108.17 and 108.18, the department shall do one of the following:

12 a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), restore the  
13 proper amount to the employer's account and charge that amount to the fund's  
14 balancing account, and shall thereafter reimburse the balancing account by  
15 crediting to it benefits which would otherwise be payable to, or cash recovered from,  
16 the employee; ~~or,~~

17 **SECTION 18.** 108.04 (13) (d) 4. (intro.) and a. of the statutes are amended to read:

18 108.04 (13) (d) 4. (intro.) To correct any erroneous payment not so adjusted from  
19 the account of an employer ~~which is a government unit, an Indian tribe, or a nonprofit~~  
20 ~~organization and which has elected~~ that is subject to reimbursement financing, the  
21 department shall do one of the following:

22 a. If recovery of an overpayment is permitted under s. 108.22 (8) (c), credit to  
23 the account benefits which would otherwise be payable to, or cash received from, the  
24 employee; ~~or,~~ unless subd. 4. c. applies.

25 **SECTION 19.** 108.04 (13) (d) 4. c. of the statutes is created to read:

1           108.04 (13) (d) 4. c. If the erroneous payment resulted from a false statement  
2           or representation about an individual's identity and the employer was not at fault  
3           for the erroneous payment, restore the proper amount to the employer's account and  
4           reimburse the balancing account by crediting to it benefits that would otherwise be  
5           payable to, or cash recovered from, the individual who caused the erroneous  
6           payment.

7           **SECTION 20.** 108.04 (16) (b) of the statutes is amended to read:

8           108.04 (16) (b) The department shall not apply any benefit reduction or  
9           disqualification under sub. (1) (b), (2) (a), or (7) (c), or ~~(8) (e) (cg)~~ or s. 108.141 (3g) (d)  
10          that is not the result of approved training while an individual is enrolled in approved  
11          training.

12          **SECTION 21.** 108.05 (1) (q) of the statutes is repealed.

13          **SECTION 22.** 108.05 (1) (r) of the statutes is amended to read:

14          108.05 (1) (r) Except as provided in s. 108.062 (6) (a), each eligible employee  
15          shall be paid benefits for each week of total unemployment that commences on or  
16          after January 5, 2014, at the weekly benefit rate specified in this paragraph. Unless  
17          sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base  
18          period wages that were paid during that quarter of the employee's base period in  
19          which the employee was paid the highest total wages, rounded down to the nearest  
20          whole dollar, except that, if that amount is less than ~~the minimum amount shown~~  
21          ~~in the following schedule~~ \$54, no benefits are payable to the employee and, if that  
22          amount is more than ~~the maximum amount shown in the following schedule~~ \$370,  
23          the employee's weekly benefit rate shall be ~~the maximum amount shown in the~~  
24          ~~following schedule~~ \$370 and except that, if the employee's benefits are exhausted  
25          during any week under s. 108.06 (1), the employee shall be paid the remaining



1 amount of benefits payable to the employee ~~in lieu of the amount shown in the~~  
2 ~~following schedule: [See Figure 108.05 (1) (r) following]~~ under s. 108.06 (1). The  
3 department shall publish on its Internet site a weekly benefit rate schedule of  
4 quarterly wages and the corresponding weekly benefit rates as calculated in  
5 accordance with this paragraph.

6 SECTION 23. 108.05 (1) (r) (figure) of the statutes is repealed.

7 SECTION 24. 108.05 (2) of the statutes is repealed.

8 SECTION 25. 108.05 (2m) of the statutes is repealed.

9 SECTION 26. 108.09 (4o) of the statutes is amended to read:

10 108.09 (4o) DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. In any hearing  
11 before an appeal tribunal under this section, a departmental record relating to a  
12 claim for benefits, other than a report specified in sub. (4m), constitutes prima facie  
13 evidence, and shall be admissible to prove, that an employer provided or failed to  
14 provide to the department complete and correct information in a fact-finding  
15 investigation of the claim, notwithstanding that the record or a statement contained  
16 in the record may be uncorroborated hearsay and may constitute the sole basis upon  
17 which issue of the employer's failure is decided, if the parties appearing at the  
18 hearing have been given an opportunity to review the record at or before the hearing  
19 and to rebut the information contained in the record. A record of the department that  
20 is admissible under this subsection shall be regarded as self authenticating and shall  
21 require no foundational or other testimony for its admissibility, unless the  
22 circumstances affirmatively indicate a lack of trustworthiness in the record. If such  
23 a record is admitted and made the basis of a decision, the record may constitute  
24 substantial evidence under ~~s. 102.23 (6)~~ sub. (7) (f). For purposes of this subsection,  
25 "departmental record" means a memorandum, report, record, document, or data

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1 compilation that has been made or maintained by employees of the department in  
2 the regular course of the department's fact-finding investigation of a benefit claim,  
3 is contained in the department's paper or electronic files of the benefit claim, and  
4 relates to the department's investigative inquiries to an employer or statements or  
5 other matters submitted by the employer or its agent in connection with the  
6 fact-finding investigation of a benefit claim. A departmental record may not be  
7 admitted into evidence under this subsection or otherwise used under this  
8 subsection for any purpose other than to prove whether an employer provided or  
9 failed to provide to the department complete and correct information in a  
10 fact-finding investigation of a claim.

11 **SECTION 27.** 108.09 (7) (a) and (b) of the statutes are amended to read:

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

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

10 **SECTION 28.** 108.09 (7) (c) to (h) of the statutes are created to read:

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

24 2. Except as provided in this subdivision, the proceedings shall be in the circuit  
25 court of the county where the plaintiff resides, except that if the plaintiff is the

1 department, the proceedings shall be in the circuit court of the county where a  
2 defendant other than the commission resides. The proceedings may be brought in  
3 any circuit court if all parties appearing in the case agree or if the court, after notice  
4 and a hearing, so orders. Commencing an action in a county in which no defendant  
5 resides does not deprive the court of competency to proceed to judgment on the merits  
6 of the case.

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

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

18 5. Within 60 days after appearing in an action for judicial review, the  
19 commission shall make return to the court of all documents and materials on file in  
20 the matter, all testimony that has been taken, and the commission's order and  
21 findings. Such return of the commission, when filed in the office of the clerk of the  
22 circuit court, shall constitute a judgment roll in the action, and it shall not be  
23 necessary to have a transcript approved. After the commission makes return of the  
24 judgment roll to the court, the court shall schedule briefing by the parties. Any party

1 may request oral argument before the court, subject to the provisions of law for a  
2 change of the place of trial or the calling in of another judge.

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

5 a. That the commission acted without or in excess of its powers.

6 b. That the order was procured by fraud.

7 c. That the findings of fact by the commission do not support the order.

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

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

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

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

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

24 **SECTION 29.** 108.09 (7) (d) of the statutes is renumbered 108.09 (7) (i) and  
25 amended to read:

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

8           **SECTION 30.** 108.10 (4) of the statutes is amended to read:

9           108.10 (4) ~~The department or the employing unit may commence an action for~~  
10 ~~the judicial review of a commission decision under this section, provided the~~  
11 ~~department, or the employing unit, after exhausting~~ has exhausted the remedies  
12 ~~provided under this section, has commenced such action within 30 days after such~~  
13 ~~decision was mailed to the employing unit's last known address. The department~~  
14 may commence an action for the judicial review of a commission decision under this  
15 section, but the department is not required to have been a party to the proceedings  
16 before the commission or to have exhausted the remedies provided under this  
17 section. In an action commenced under this section by a party that is not the  
18 department, the department shall be a defendant and shall be named as a party in  
19 the complaint commencing the action. If a plaintiff fails to name either the  
20 department or the commission as defendants and serve them as required under s.  
21 108.09 (7), the court shall dismiss the action. The scope of judicial review, and the  
22 manner thereof insofar as applicable, shall be the same as that provided in s. 108.09  
23 (7). In an action commenced by an employing unit under this section, the department  
24 shall be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the  
25 complaint commencing the action.

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1           **SECTION 31.** 108.14 (8n) (e) of the statutes, as affected by 2015 Wisconsin Act  
2 55, is amended to read:

3           108.14 (8n) (e) The department shall charge this state's share of any benefits  
4 paid under this subsection to the account of each employer by which the employee  
5 claiming benefits was employed in the applicable base period, in proportion to the  
6 total amount of wages he or she earned from each employer in the base period, except  
7 that if s. 108.04 (1) (f), (5), (7) (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),  
8 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) would have applied to employment by such  
9 an employer who is subject to the contribution requirements of ss. 108.17 and 108.18,  
10 the department shall charge the share of benefits based on employment with that  
11 employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3)  
12 would have applied to an employer that is not subject to the contribution  
13 requirements of ss. 108.17 and 108.18, the department shall charge the share of  
14 benefits based on that employment in accordance with s. 108.07 (5) (a) and (b). The  
15 department shall also charge the fund's balancing account with any other state's  
16 share of such benefits pending reimbursement by that state.

17           **SECTION 32.** 108.141 (4) of the statutes is amended to read:

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

23           **SECTION 33.** 108.141 (7) (a) of the statutes, as affected by 2015 Wisconsin Act  
24 55, is amended to read:

1           108.141 (7) (a) The department shall charge the state's share of each week of  
2 extended benefits to each employer's account in proportion to the employer's share  
3 of the total wages of the employee receiving the benefits in the employee's base  
4 period, except that if the employer is subject to the contribution requirements of ss.  
5 108.17 and 108.18 the department shall charge the share of extended benefits to  
6 which s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),  
7 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing account.

8           **SECTION 34.** 108.151 (3) (b) of the statutes is renumbered 108.151 (3) (b) (intro.)  
9 and amended to read:

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

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

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

15           s.,

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

17           **SECTION 35.** 108.151 (3) (b) 2. of the statutes is created to read:

18           108.151 (3) (b) 2. The employer has failed to pay the required assessments  
19 authorized by sub. (7) or s. 108.155.

20           **SECTION 36.** 108.151 (4) (b) of the statutes is amended to read:

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



1 greater value. The treasurer may, with 10 days' notice to the employer, liquidate the  
2 assurances deposited to the extent necessary to satisfy any delinquent  
3 reimbursements or assessments due under this section or s. 108.155 together with  
4 any interest and any tardy filing fees due. The treasurer shall hold in escrow any  
5 cash remaining from the sale of the assurances, without interest. The fund's  
6 treasurer shall require the employer within 30 days following any liquidation of  
7 deposited assurances to deposit sufficient additional assurances to make whole the  
8 employer's deposit at the prior level. Any income from assurances held in escrow  
9 shall inure to and be the property of the employer.

10 **SECTION 37.** 108.152 (6) (a) (intro.) of the statutes is amended to read:

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

15 **SECTION 38.** 108.155 of the statutes is created to read:

16 **108.155 Liability of reimbursable employers for identity theft.** (1) In  
17 this section:

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

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

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

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

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

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

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

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

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

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

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

24 (d) If the department assesses reimbursable employers under par. (c), the  
25 department shall determine the amount of assessments to be levied as provided in

1 sub. (3), and the fund's treasurer shall notify reimbursable employers that the  
2 assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall  
3 be payable by each reimbursable employer that is subject to this chapter as of the  
4 date the assessment is imposed. Assessments imposed under this section shall be  
5 credited to the balancing account.

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

10 (b) Except as provided in par. (c), the amount of a reimbursable employer's  
11 assessment imposed under sub. (2) (c) for a given calendar year is the product of the  
12 rate determined under par. (a) and the reimbursable employer's payroll for the  
13 preceding calendar year, as reported by the reimbursable employer under s. 108.15  
14 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated  
15 by the department.

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

21 (4) The department shall bill assessments under this section to a reimbursable  
22 employer at its last known address in the month of September of each year and the  
23 assessment shall be due to the department within 20 days after the date such bill is  
24 mailed by the department. Any assessment that remains unpaid after its applicable  
25 due date is a delinquent payment. If a reimbursable employer is delinquent in

1 paying an assessment under this section, in addition to pursuing action under the  
2 provisions of ss. 108.22 and 108.225, the department may do any of the following:

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

5 (b) Terminate the reimbursable employer's election of reimbursement  
6 financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s.  
7 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under  
8 s. 108.151 (2).

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

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

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

20 **SECTION 39.** 108.16 (6) (g) of the statutes is amended to read:

21 108.16 (6) (g) Any payment or other amount received for the balancing account  
22 under s. 108.15 ~~or~~, 108.151, 108.152, or 108.155.

23 **SECTION 40.** 108.16 (6m) (i) of the statutes is created to read:

24 108.16 (6m) (i) Any amount restored to the account of an employer subject to  
25 reimbursement financing under s. 108.04 (13) (d) 4.

1           **SECTION 41.** 108.16 (7m) of the statutes is amended to read:

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

8           **SECTION 42.** 108.16 (10) of the statutes, as affected by 2015 Wisconsin Act 86,  
9           is amended to read:

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

19           **SECTION 43.** 108.18 (7) (a) 1. of the statutes is amended to read:

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

25           **SECTION 44.** 108.18 (7) (h) of the statutes is amended to read:

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 45.** 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 46.** 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 47.** 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

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 48.** 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

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 49.** 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 50.** 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 51.** 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 52.** 108.22 (1) (b) of the statutes is amended to read:

17 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),  
18 108.151 (5) (f) or (7), 108.155, 108.16 (8), 108.17, or 108.205 would otherwise be a  
19 Saturday, Sunday, or legal holiday under state or federal law, the due date is the next  
20 following day which is not a Saturday, Sunday, or legal holiday under state or federal  
21 law.

22 **SECTION 53.** 108.22 (1) (c) of the statutes is amended to read:

23 108.22 (1) (c) Any report or payment, except a payment required by s. 108.15  
24 (5) (b) ~~or~~, 108.151 (5) (f) or (7), or 108.155, to which this subsection applies is  
25 delinquent, within the meaning of par. (a), unless it is received by the department,



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

6 **SECTION 54.** 108.22 (1m) of the statutes is amended to read:

7 108.22 (1m) If an employer owes any contributions, reimbursements, or  
8 assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or  
9 payments for forfeitures or other penalties to the department under this chapter and  
10 fails to pay the amount owed, the department has a perfected lien upon the  
11 employer's right, title, and interest in all of its real and personal property located in  
12 this state in the amount finally determined to be owed, plus costs. Except where  
13 creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien  
14 is effective when the department issues a determination of the amount owed under  
15 s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the  
16 date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other  
17 insolvency law, it shall become effective immediately upon expiration or removal of  
18 such bar or stay. The perfected lien does not give the department priority over  
19 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges  
20 whose interests have been recorded before the department's lien is recorded.

21 **SECTION 55.** 108.22 (9) of the statutes is amended to read:

22 108.22 (9) An individual who is an officer, employee, member ~~or~~, manager,  
23 partner, or other responsible person holding at least 20% 20 percent of the ownership  
24 interest of a corporation ~~or of a~~, limited liability company, or other business  
25 association subject to this chapter, and who has control or supervision of or

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

22 **SECTION 56.** 108.225 (1) (a) of the statutes is amended to read:

23 108.225 (1) (a) "Contribution" includes a reimbursement or assessment under  
24 s. 108.15, 108.151, ~~or~~ 108.152, or 108.155, interest for a nontimely payment, fees, and

1 any payment due for a forfeiture imposed upon an employing unit under s. 108.04  
2 (11) (c) or other penalty assessed by the department under this chapter.

3 **SECTION 57.** 2011 Wisconsin Act 198, section 4m is repealed.

4 **SECTION 58.** 2011 Wisconsin Act 198, section 6m is repealed.

5 **SECTION 59.** 2011 Wisconsin Act 198, section 37m is repealed.

6 **SECTION 60.** 2011 Wisconsin Act 198, section 47m (1), as last affected by 2013  
7 Wisconsin Act 36, is repealed.

8 **SECTION 61.** 2013 Wisconsin Act 36, section 236m is repealed.

9 **SECTION 62. Nonstatutory provisions.**

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

14 **SECTION 63. Initial applicability.**

15 (1) CONCEALMENT BY CLAIMANTS. The renumbering and amendment of section  
16 108.04 (11) (g) of the statutes and the creation of section 108.04 (11) (g) 2. and 3. of  
17 the statutes first apply to determinations issued under section 108.09 of the statutes  
18 on the effective date of this subsection.

19 (2) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section  
20 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes first applies  
21 retroactively to determinations issued under section 108.09 of the statutes on the  
22 effective date of this subsection.

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 first applies to actions filed on the effective  
25 date of this subsection.





State of Wisconsin  
2015 - 2016 LEGISLATURE

LRB-4395/P3  
MED&AJM:kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

GA ✓  
Inserts  
for  
-2000/c

1 **AN ACT to repeal** 108.09 (2) (cm); **to amend** 108.09 (2) (a), 108.09 (2) (d), 108.09  
2 (2r), 108.09 (4) (c), 108.09 (4) (d) 1. and 2., 108.09 (4) (e), 108.09 (4) (f) 1., 108.09  
3 (4) (f) 2. (intro.), 108.09 (4) (f) 3., 108.09 (5) (b), 108.09 (5) (d), 108.09 (6) (a),  
4 108.09 (6) (b), 108.09 (6) (c), 108.09 (6) (d), 108.095 (2), 108.095 (3), 108.095 (7),  
5 108.10 (1), 108.10 (2) and 108.10 (6); and **to repeal and recreate** 108.09 (4) (d)  
6 3. and 108.09 (5) (c) of the statutes; **relating to:** determinations, decisions, and  
7 orders under the unemployment insurance law.

**Analysis by the Legislative Reference Bureau**

**Administrative review of UI decisions**

Under current law, initial determinations regarding UI matters are made by the Department of Workforce Development. Those determinations may be appealed to appeal tribunals (ALJs), and an ALJ's decision may be appealed to the Labor and Industry Review Commission. A decision of the commission may then be appealed to circuit court. This bill makes a number of changes to the processes under current law for issuing and appealing decisions, determinations, and orders under the UI law, including the following:

1. If a party fails to appear at a hearing on the merits of a UI determination, current law provides for a hearing on the issue of whether a party had good cause for failing to appear at the hearing. The bill allows an ALJ to issue, without a hearing,

This is Ins A1

This is Ins A2

a decision on the issue of whether a party to a determination had good cause for failing to appear at such a hearing. The bill allows the ALJ to make the decision based upon the party's explanation for failing to appear, as well as any response submitted to that explanation by the opposing party. The bill allows the opposing party seven days to submit such a response to the party's explanation for failing to appear.

2. The bill allows for the electronic delivery of UI determinations and decisions, in addition to or instead of mailing.

3. Under current law, all testimony at UI hearings before ALJs must be taken down by a stenographer, or recorded by a recording machine. The bill instead provides that all such testimony must be recorded by electronic means and allows LIRC to use the electronic recording in a review of an ALJ's decision. As under current law, the bill allows a party, for a fee, to request a transcript of the hearing.

End Ins  
AJ →

1454-8 ***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1 **SECTION 1.** 108.09 (2) (a) of the statutes is amended to read:  
2 108.09 (2) (a) The department shall promptly issue a computation setting forth  
3 the employee's potential benefit rights based on reports filed by an employer or  
4 employers under s. 108.205, or on the employee's statement and any other  
5 information then available. The results of the computation, a recomputation, or  
6 pertinent portion of either, shall be delivered electronically to, or mailed to the  
7 last-known address of, each party. The department may recompute an employee's  
8 potential benefit rights at any time on the basis of subsequent information or to  
9 correct a mistake, including an error of law, except that a party's failure to make  
10 specific written objection, received by the department within 14 days after the above  
11 electronic delivery or mailing, as to a computation or recomputation is a waiver by  
12 such party of any objection thereto. Any objections to a computation which that are  
13 not satisfactorily resolved by recomputation shall be resolved by a determination  
14 under par. (b).

X 15 **SECTION 2.** 108.09 (2) (cm) of the statutes is repealed.

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

2           108.09 (2) (d) A copy of each determination shall be delivered electronically to,  
3 ~~or mailed to the last-known address of, each of the parties party,~~ except that a party's  
4 copy of any determination may be given to such party instead of being electronically  
5 delivered or mailed.

6           **SECTION 4.** 108.09 (2r) of the statutes is amended to read:

7           108.09 (2r) HEARING REQUEST. Any party to a determination may request a  
8 hearing as to any matter in that determination if ~~such~~ the request is made in  
9 accordance with the procedure prescribed by the department and is received by ~~the~~  
10 ~~department~~ an appeal tribunal or postmarked within 14 days after a copy of the  
11 determination was delivered electronically, mailed, or given to ~~such~~ the party,  
12 whichever first occurs.

13           **SECTION 5.** 108.09 (4) (c) of the statutes is amended to read:

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

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

7 **SECTION 6.** 108.09 (4) (d) 1. and 2. of the statutes are amended to read:

8 108.09 (4) (d) 1. If the appellant fails to appear at a hearing held under this  
9 section and due notice of the hearing was electronically delivered to the appellant or  
10 mailed to the appellant's last-known address, the appeal tribunal shall issue a  
11 decision dismissing the request for hearing unless subd. 2. applies.

12 2. If the appellant ~~delivers or transmits~~ submits to the appeal tribunal a  
13 written explanation for nonappearance to the department which failing to appear at  
14 the hearing that is received before a decision under subd. 1. is electronically  
15 delivered or mailed, the department may so notify each party and schedule a hearing  
16 concerning whether there was good cause for under subd. 1., an appeal tribunal shall  
17 review the appellant's nonappearance. The department may also provisionally  
18 schedule a hearing concerning any matter in the determination. If, after hearing  
19 testimony, explanation. The appeal tribunal shall electronically deliver or mail to  
20 the respondent a copy of the appellant's explanation. The respondent may, within  
21 7 days after the appeal tribunal electronically delivers or mails the appellant's  
22 explanation to the respondent, submit to the appeal tribunal a written response to  
23 the appellant's explanation. If the appeal tribunal finds that the appellant's  
24 explanation does not establish good cause for nonappearance failing to appear, the  
25 appeal tribunal shall issue a decision containing this finding and dismissing the



1 ~~appeal~~ such a decision may be issued without a hearing. If, after hearing testimony,  
2 the appeal tribunal finds that the appellant's explanation establishes good cause for  
3 ~~nonappearance~~ failing to appear, the appeal tribunal shall issue a decision  
4 containing this finding, and such a decision may be issued without a hearing. The  
5 same or another appeal tribunal established by the department for this purpose shall  
6 then issue a decision under sub. (3) (b) after conducting a hearing concerning any  
7 matter in the determination. If such a hearing is held concerning any matter in the  
8 determination, the appeal tribunal shall only consider testimony and other evidence  
9 admitted at that hearing in making a decision.

X  
10 **SECTION 7.** 108.09 (4) (d) 3. of the statutes is repealed and recreated to read:

11 108.09 (4) (d) 3. If the appellant submits to the appeal tribunal a written  
12 explanation for failing to appear at the hearing that is received within 21 days after  
13 a decision is electronically delivered or mailed under subd. 1., an appeal tribunal  
14 shall review the appellant's explanation. The appeal tribunal shall electronically  
15 deliver or mail to the respondent a copy of the appellant's explanation. The  
16 respondent may, within 7 days after the appeal tribunal electronically delivers or  
17 mails the appellant's explanation to the respondent, submit to the appeal tribunal  
18 a written response to the appellant's explanation. If the appeal tribunal finds that  
19 the appellant's explanation does not establish good cause for failing to appear, the  
20 appeal tribunal shall issue a decision containing this finding, and such a decision  
21 may be issued without a hearing. If the appeal tribunal finds that the appellant's  
22 explanation establishes good cause for failing to appear, the appeal tribunal shall  
23 issue a decision containing this finding, and the decision may be issued without a  
24 hearing. The appeal tribunal shall then set aside the original decision and schedule  
25 a hearing concerning any matter in the determination. The same or another appeal

1 tribunal established by the department for this purpose shall then issue a decision  
2 under sub. (3) (b) after conducting a hearing concerning any matter in the  
3 determination. If such a hearing is held concerning any matter in the determination,  
4 the appeal tribunal shall only consider the testimony and other evidence admitted  
5 at that hearing in making a decision.

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

7 108.09 (4) (e) *Respondent's failure to appear.* 1. If the respondent fails to appear  
8 at a hearing held under this section but the appellant is present, and due notice of  
9 the hearing was electronically delivered to the respondent or mailed to the  
10 respondent's last-known address, the appeal tribunal shall hold the hearing. The  
11 appeal tribunal shall consider records and information already submitted to the  
12 department by the appellant and the respondent regarding the determination or the  
13 appeal, take the testimony of the appellant and any witnesses, and shall issue a  
14 decision under sub. (3) (b) unless subd. 2. applies.

15 2. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a  
16 written explanation for ~~nonappearance to the department which~~ failing to appear at  
17 the hearing that is received before a decision favorable to the respondent is  
18 electronically delivered or mailed under subd. 1., the appeal tribunal shall  
19 acknowledge receipt of the explanation in its decision but shall take no further action  
20 concerning the explanation at that time. If the respondent ~~delivers or transmits~~  
21 submits to the appeal tribunal a written explanation for ~~nonappearance to the~~  
22 ~~department which~~ failing to appear that is received before a decision unfavorable to  
23 the respondent is electronically delivered or mailed under subd. 1., ~~the department~~  
24 ~~may so notify each party and may schedule a hearing concerning whether there was~~  
25 ~~good cause for the respondent's nonappearance. The department may also~~

1 ~~provisionally schedule a hearing for further testimony concerning any matter in the~~  
2 ~~determination. If, after hearing testimony, the appeal tribunal finds that the~~  
3 ~~respondent's explanation does not establish good cause for nonappearance, the~~  
4 ~~appeal tribunal shall issue a decision containing this finding. The same or another~~  
5 ~~appeal tribunal established by the department for this purpose shall also issue a~~  
6 ~~decision based on the testimony and other evidence presented at the hearing at~~  
7 ~~which the respondent failed to appear. If, after hearing testimony, the appeal~~  
8 ~~tribunal finds that the respondent's explanation~~ an appeal tribunal shall review the  
9 respondent's explanation. The appeal tribunal shall electronically deliver or mail to  
10 the appellant a copy of the respondent's explanation. The appellant may, within 7  
11 days after the appeal tribunal electronically delivers or mails the respondent's  
12 explanation to the appellant, submit to the appeal tribunal a written response to the  
13 respondent's explanation. If the appeal tribunal finds that the respondent's  
14 explanation does not establish good cause for failing to appear, the appeal tribunal  
15 shall issue a decision containing this finding, and such a decision may be issued  
16 without a hearing. If the appeal tribunal finds that the respondent's explanation  
17 establishes good cause for nonappearance ~~failing to appear~~, the appeal tribunal shall  
18 issue a decision containing this finding, and such a decision may be issued without  
19 a hearing. The same or another appeal tribunal established by the department for  
20 this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing  
21 concerning any matter in the determination. If such a 2<sup>nd</sup> hearing is held concerning  
22 any matter in the determination, the appeal tribunal shall only consider testimony  
23 and other evidence admitted at that hearing in making a decision.

24 3. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a  
25 written explanation for nonappearance to the department which ~~failing to appear at~~

1 the hearing that is received within 21 days after a decision favorable to the  
2 respondent is electronically delivered or mailed under subd. 1., the ~~department~~  
3 appeal tribunal shall notify the respondent of receipt of the explanation and that  
4 since the decision was favorable to the respondent no further action concerning the  
5 explanation will be taken at that time. If the respondent ~~delivers or transmits~~  
6 submits to the appeal tribunal a written explanation for ~~nonappearance to the~~  
7 ~~department which~~ failing to appear that is received within 21 days after a decision  
8 unfavorable to the respondent is electronically delivered or mailed under subd. 1.,  
9 ~~the~~ an appeal tribunal shall review the respondent's explanation. The appeal  
10 tribunal shall electronically deliver or mail to the appellant a copy of the respondent's  
11 explanation. The appellant may, within 7 days after the appeal tribunal  
12 electronically delivers or mails the respondent's explanation to the appellant, submit  
13 to the appeal tribunal a written response to the respondent's explanation. If the  
14 appeal tribunal finds that the respondent's explanation does not establish good cause  
15 for failing to appear, the appeal tribunal shall issue a decision containing this  
16 finding, and such a decision may be issued without a hearing. If the appeal tribunal  
17 finds that the respondent's explanation establishes good cause for failing to appear,  
18 the appeal tribunal shall issue a decision containing this finding, and such a decision  
19 may be issued without a hearing. The appeal tribunal may shall then set aside the  
20 ~~original decision and the department may schedule a hearing concerning whether~~  
21 ~~there was good cause for the respondent's nonappearance. The department may also~~  
22 ~~provisionally schedule a hearing concerning any matter in the determination. If the~~  
23 ~~original decision is not set aside, the appeal tribunal may, on its own motion amend~~  
24 ~~or set aside that decision within 21 days after the decision concerning whether there~~  
25 ~~was good cause for the respondent's nonappearance is mailed under subd. 1. If, after~~

1 ~~hearing testimony, the appeal tribunal finds that the respondent's explanation does~~  
2 ~~not establish good cause for nonappearance, the appeal tribunal shall issue a~~  
3 ~~decision containing this finding and, if necessary, reinstating the decision which was~~  
4 ~~set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's~~  
5 ~~explanation establishes good cause for nonappearance, the same or another appeal~~  
6 ~~tribunal established by the department for this purpose shall issue a decision~~  
7 ~~containing this finding. The same or another appeal tribunal established by the~~  
8 ~~department for this purpose shall then issue a decision under sub. (3) (b) after~~  
9 ~~conducting a hearing concerning any matter in the determination. If such a 2<sup>nd</sup>~~  
10 ~~hearing is held concerning any matter in the determination, the appeal tribunal~~  
11 ~~shall only consider the testimony and other evidence admitted at that hearing in~~  
12 ~~making a decision.~~

13 **SECTION 9.** 108.09 (4) (f) 1. of the statutes is amended to read:

14 108.09 (4) (f) 1. ~~Except as provided in par. (e) 3., within~~ Within 21 days after  
15 its decision was electronically delivered or mailed to the parties, the appeal tribunal  
16 may, on its own motion, amend or set aside its decision and may thereafter make new  
17 findings and issue a decision on the basis of evidence previously submitted in such  
18 case, or the same or another appeal tribunal may make new findings and issue a  
19 decision after taking additional testimony.

20 **SECTION 10.** 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

21 108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely  
22 petition for review of the appeal tribunal decision by the commission, the appeal  
23 tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at  
24 any time if the appeal tribunal finds that:

25 **SECTION 11.** 108.09 (4) (f) 3. of the statutes is amended to read:

1           108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for  
2 review of the appeal tribunal decision by the commission, the appeal tribunal may,  
3 within 2 years after the date of the decision, reopen its decision if it has reason to  
4 believe that a party offered false evidence or a witness gave false testimony on an  
5 issue material to its decision. Thereafter, and after receiving additional evidence or  
6 taking additional testimony, the same or another appeal tribunal may set aside its  
7 original decision, make new findings, and issue a decision.

8           **SECTION 12.** 108.09 (5) (b) of the statutes is amended to read:

9           108.09 (5) (b) All testimony at any hearing under this section shall be ~~taken~~  
10 ~~down by a stenographer, or recorded by a recording machine~~ electronic means, but  
11 need not be transcribed unless either of the parties requests a transcript ~~prior to~~  
12 before expiration of that party's right to further appeal under this section and pays  
13 a fee to the commission in advance, the amount of which shall be established by rule  
14 of the commission. When the commission provides a transcript ~~is thus furnished to~~  
15 one of the parties upon request, the commission shall also provide a copy of the  
16 transcript ~~shall be furnished the~~ to all other party parties free of charge. The  
17 transcript fee ~~thus~~ collected shall be paid to the administrative account.

18           **SECTION 13.** 108.09 (5) (c) of the statutes is repealed and recreated to read:

19           108.09 (5) (c) The department shall furnish a copy of the electronic recording  
20 to the parties upon payment of any fee required by the department by rule.

21           **SECTION 14.** 108.09 (5) (d) of the statutes is amended to read:

22           108.09 (5) (d) In its review of the decision of an appeal tribunal, the commission  
23 shall use the electronic recording of the hearing or a written synopsis of the  
24 testimony ~~and other evidence taken at a hearing or~~ shall use a transcript of the  
25 hearing prepared, under the direction of the department or commission, ~~by an~~

Each  
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↓

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1 ~~employee of the department, an employee of the commission or a contractor. If a~~  
2 ~~party shows to the commission that a synopsis is not sufficiently complete and~~  
3 ~~accurate to fairly reflect the relevant and material testimony and other evidence~~  
4 ~~taken, the commission shall direct the preparation of a transcript. If a transcript is~~  
5 ~~prepared, the transcript shall indicate the transcriber's name and whether the~~  
6 ~~transcriber is an employee of the department, an employee of the commission, or a~~  
7 ~~contractor and shall also use any other evidence taken at the hearing.~~

8 **SECTION 15.** 108.09 (6) (a) of the statutes is amended to read:

9 108.09 (6) (a) The department or any party may petition the commission for  
10 review of an appeal tribunal decision, pursuant to ~~commission rules promulgated by~~  
11 ~~the commission~~, if such ~~the~~ petition is received by the ~~department or~~ commission or  
12 postmarked within 21 days after the appeal tribunal decision was electronically  
13 delivered to the party or mailed to the party's last-known address. The commission  
14 shall dismiss any petition if not timely filed unless the petitioner shows probable  
15 good cause that the reason for having failed to file the petition timely was beyond the  
16 control of the petitioner. If the petition is not dismissed, the commission may take  
17 action under par. (d).

18 **SECTION 16.** 108.09 (6) (b) of the statutes is amended to read:

19 108.09 (6) (b) Within 28 days after a decision of the commission is electronically  
20 delivered or mailed to the parties, the commission may, on its own motion, set aside  
21 the decision for further consideration and take action under par. (d).

22 **SECTION 17.** 108.09 (6) (c) of the statutes is amended to read:

23 108.09 (6) (c) On its own motion, for reasons it deems sufficient, the commission  
24 may set aside any final determination of the department or appeal tribunal or  
25 commission decision within 2 years ~~from~~ after the date thereof upon grounds of

1 mistake or newly discovered evidence, and take action under par. (d). The  
2 commission may set aside any final determination of the department or any decision  
3 of an appeal tribunal or of the commission at any time, and take action under par.  
4 (d), if the benefits paid or payable to a claimant have been affected by wages earned  
5 by the claimant ~~which~~ that have not been paid, and the commission is provided with  
6 notice from the appropriate state or federal court or agency that a wage claim for  
7 those wages will not be paid in whole or in part.

8 **SECTION 18.** 108.09 (6) (d) of the statutes is amended to read:

9 108.09 (6) (d) In any case before the commission for action under this  
10 subsection, the commission may affirm, reverse, modify, or set aside the decision on  
11 the basis of the evidence previously submitted, ~~may~~; order the taking of additional  
12 evidence as to such matters as it may direct, ~~or it may~~; or remand the matter to the  
13 department for further proceedings.

14 **SECTION 19.** 108.095 (2) of the statutes is amended to read:

15 108.095 (2) The department shall investigate whether any person has obtained  
16 benefits that were payable to another person by means of any false statement or  
17 representation, and may issue an initial determination concerning its findings. The  
18 department shall electronically deliver a copy of the determination to, or mail a copy  
19 of the determination to the last-known address of, each party affected thereby.  
20 Unless designated by a determination under this section, an employing unit is not  
21 a party to the determination. The department may set aside or amend the  
22 determination at any time prior to a hearing concerning the determination under  
23 sub. (5) on the basis of subsequent information or to correct a mistake, including an  
24 error of law.

25 **SECTION 20.** 108.095 (3) of the statutes is amended to read:

End  
LAS  
15-10

15  
19-7  
↓



1           108.095 (3) Any party to a determination may appeal that determination by  
2 requesting a hearing concerning any matter in that determination if the request is  
3 received by the department or postmarked within 14 days after the electronic  
4 delivery or mailing.

5           **SECTION 21.** 108.095 (7) of the statutes is amended to read:

6           108.095 (7) Any party may commence an action for judicial review of a decision  
7 of the commission under this section, after exhausting the remedies provided under  
8 this section, by commencing the action within 30 days after the decision of the  
9 commission is delivered electronically or mailed to the department and is delivered  
10 electronically to, or mailed to the last-known address of, each other party. The scope  
11 and manner of judicial review is the same as that provided in s. 108.09 (7).

12           **SECTION 22.** 108.10 (1) of the statutes is amended to read:

13           108.10 (1) The department shall investigate the status, and the existence and  
14 extent of liability of an employing unit, and may issue an initial determination  
15 accordingly. The department may set aside or amend the determination at any time  
16 prior to a hearing on the determination on the basis of subsequent information or to  
17 correct a mistake, including an error of law. The department shall electronically  
18 deliver a copy of each determination to, or mail a copy of each determination to the  
19 last-known address of, the employing unit affected thereby. The employing unit may  
20 request a hearing as to any matter in that determination if the request is received  
21 by the department or postmarked within 21 days after the mailing and in accordance  
22 with such procedure as the department prescribes by rule.

23           **SECTION 23.** 108.10 (2) of the statutes is amended to read:

24           108.10 (2) Any hearing duly requested shall be held before an appeal tribunal  
25 established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable

1 to the proceedings before such tribunal. The department may be a party in any  
2 proceedings before an appeal tribunal. The employing unit or the department may  
3 petition the commission for review of the appeal tribunal's decision under s. 108.09  
4 (6).

5 **SECTION 24.** 108.10 (6) of the statutes is amended to read:

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

13

(END)

Jan. 15, 2016, call from Andy Rubsam about UIAC. 5 approved items:

1. Amend s. 108.04 (8) (d) 108.04 (8) (dm) to correspond to management proposal #1. In addition, define good cause to correspond with email from Scott Manley.
2. Repeal language added in the budget requiring DWD to define suitable work by rule.
3. In s. 108.04 (12) (e), add references to permanent total disability in both sentences.
4. Misclassification - Per email from Andy. Assessments go to PI fund.
5. L15-01 #3 on p. 5. Same trades as other provision, but delete "misrepresentation, or fraudulent means" and factors. Assessments go to PI fund.

# Management Proposal

11/19/15

## Unemployment Insurance Reforms

1. **Suitable Work** – Define suitable work under sec. 108.04 (8), during the first 6 weeks of unemployment, to be “work that pays the claimant 75% or more of what they previously earned during the high quarter and does not involve a lower grade of skill relative to that of their most recent employment.”

After six weeks of unemployment, suitable work would be defined as “any work that the individual is capable of performing, whether or not they have any experience or training, that pays wages that are above the lowest quartile of wages for similar work in the region.”

2. **Good Cause** – Define “good cause” under sec. 108.04 (8) relating circumstances under which a claimant can turn down an offer of suitable work as “a compelling reason which would give the claimant no alternative but to refuse.”
3. **Workers Compensation** – Create a rebuttable presumption that a claimant is unavailable for suitable employment for any week in which the claimant is receiving, has received or has filed for temporary total disability, or permanent total disability benefits under the workers compensation program.
4. **Requalifying Requirements** – Increase the earning requirement that has to be met under s.108.04 (7) in order to requalify for unemployment benefits after a quit from 6 times the weekly benefit rate to 10 times the weekly benefit rate.

Similarly, increase the earning requirement that has to be met by a claimant that has failed to accept suitable work under s.108.04 (8) from 6 times the weekly benefit rate to 10 times the weekly benefit rate in order to requalify for unemployment benefits.

5. **Wage Data and Classifications** – Make wage data and classification definitions available to the public on line. Provide a clear process for resolving disputes over how a job is classified and how the average wage for a particular classification in a region is established.

5/19/15

## L15-01

### Assessments for Failure to Produce Records and Willful Worker Misclassification

Proposed by: Labor Members of Unemployment Insurance Advisory Council

Drafted at the request of UIAC-Labor members by: Andy Rubsam

Date: November 19, 2015

#### ANALYSIS OF PROPOSED UI LAW CHANGE

### Assessments for Failure to Produce Records and Willful Worker Misclassification

#### 1. Description of Proposed Change

Employing units are required to maintain work records and must allow the Department to audit those records.<sup>1</sup> This proposal provides for an administrative assessment for an employing unit's failure to produce employment records to the Department, if the employing unit fails to produce the records after a second written request. The proposed assessment is \$1,000 per day until the records are produced. The proposal permits the Department to waive the assessment under certain circumstances, such as reasons beyond the employing unit's control. The Wisconsin Department of Revenue may impose a similar assessment for a taxpayer's failure to produce records in response to an audit.<sup>2</sup>

An individual who performs services for pay is presumed to be an employee; it is the employer's burden to prove that the individual is an independent contractor.<sup>3</sup> Employers in the construction, painting and drywall industries may be criminally fined \$25,000 by a court for willfully providing false information to the department for the purpose of misclassifying employees as independent contractors.<sup>4</sup> This proposal provides for an administrative assessment of the greater of \$1,000 or 40% of the tax owed for a first determination that an employer willfully misclassified workers as independent contractors. For a second determination that the

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<sup>1</sup> Wis. Stat. § 108.21(1).

<sup>2</sup> Wis. Stat. § 71.80(9m): WI-DOR may impose a penalty of "the greater of \$500 or 25 percent of the amount of the additional tax on any adjustment made by the department that results from the person's failure to produce the records."

<sup>3</sup> Wis. Stat. § 108.02(12).

<sup>4</sup> Wis. Stat. § 108.24(2m).

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employer willfully misclassified workers as independent contractors, the department would, in addition to the \$1,000 or 40% assessment, assess the employer an administrative assessment of \$5,000 per worker willfully misclassified. For a third or subsequent determination that the employer willfully misclassified workers as independent contractors, the department would, in addition to the \$1,000 or 40% assessment, assess the employer \$10,000 per worker willfully misclassified.

This proposal also creates an administrative assessment for an employing unit that requires individuals to adopt independent contractor status through coercion, misrepresentation or fraudulent means. The assessment is \$10,000 per individual coerced.

Under this proposal, the assessments for failing to produce records, willfully misclassifying workers, and coercion will be deposited into the program integrity fund.

#### **2. Proposed Statutory Change**

**Wis. Stat. § 108.19 (1s) (am) is amended to read:**

(1s) (am) The amounts collected under ss. 108.21 (4) and 108.22 (1) (at) shall be deposited into the unemployment program integrity fund.

**Wis. Stat. § 108.21 (4) is created to read:**

(4) FAILURE TO PRODUCE RECORDS. If an employing unit or person fails, after a second written request, to produce records or documents as provided under sub. (1), the department shall assess the employing unit or person a penalty of \$1,000.00 per day until the employing unit or person produces the records.

1. The department shall establish a reasonable time period for the employing unit or person to respond to a record request based on the facts of each situation. After the time period to respond to the first written request has expired, the department

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### **Assessments for Failure to Produce Records and Willful Worker Misclassification**

may issue a second written request for records of the employing unit or person. A second written request for records shall include a warning that, if the requested records are not provided by the date specified, the department shall impose the penalty provided by this subsection. The written requests for records or documents may be in electronic form if the employing unit elected to receive electronic delivery of department notices.

2. The department shall not impose a penalty under this subsection if the employing unit or person shows that, under the circumstances, the response of the employing unit or person, or failure to respond, to the department's second written request was reasonable due to factors beyond the control of the employing unit or person. The department shall consider the following factors in determining whether to waive the penalty under this subsection:
  - a. Death of the responsible person, accountant or other responsible party of the employing unit or person.
  - b. Onset of debilitating illness or injury of the responsible person, accountant or other responsible party of the employing unit or person.
  - c. Natural disaster, such as tornado, flood or fire.
  - d. Destruction of records due to events beyond control of the employing unit, person or other responsible party, but not due to neglect.
  - e. Any other reasonable circumstances beyond the control of the employing unit, person or other responsible party.

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**Assessments for Failure to Produce Records and Willful Worker Misclassification**

**Wis. Stat. § 108.22 (1) (at) is created to read:**

(1) (at)

1. An employing unit or person willfully misclassifies an individual by avoiding employee status for the individual by voluntarily and knowingly misclassifying that individual as a nonemployee. The department shall consider the following nonexclusive factors in determining whether the employing unit or person willfully misclassified a worker:
  - a. Whether the employing unit or person previously violated this subsection or of any other state or federal law that prohibits worker misclassification.
  - b. Whether the employing unit or person refused or failed to produce documentation or records to the department.
  - c. Whether the employing unit or person refused or failed to cooperate in an investigation or audit by the department.
  - d. Whether the employing unit or person differently classifies workers who perform the same tasks.
  - e. Whether the employing unit or person has actual knowledge of, deliberate ignorance of, or reckless disregard for whether or not the worker is misclassified as a nonemployee.
2. The department shall assess an employing unit or person a penalty for willfully misclassifying an employee as a nonemployee.
  - a. For a first determination that an employing unit or person willfully misclassified one or more individuals as a nonemployee, the



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### Assessments for Failure to Produce Records and Willful Worker Misclassification

employing unit or person shall be subject to a penalty of the greater of \$1,000 or 40% of the contributions owed on the wages of the individuals willfully misclassified during the period that the employing unit or person misclassified the individuals.

- b. For a second determination that an employing unit or person willfully misclassified one or more individuals as a nonemployee, the employing unit or person shall be subject to a penalty of \$5,000 for each individual that the employing unit or person willfully misclassified, in addition to the penalty in subd. a.
  - c. For a third or subsequent determination that an employing unit or person willfully misclassified one or more individuals as a nonemployee, the employing unit or person shall be subject to a penalty of \$10,000 for each individual that the employing unit or person willfully misclassified, in addition to the penalty in subd. a.
3. The department shall assess an employing unit or person a penalty of \$10,000 for each individual that the employing unit or person required, through coercion, misrepresentation, or fraudulent means, to adopt the status of a nonemployee. The department shall consider the following nonexclusive factors in issuing a determination under this subdivision:
  - a. Whether the employing unit or person required an individual to form a business entity as a condition for payment for the individual's services.

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### Assessments for Failure to Produce Records and Willful Worker Misclassification

- b. Whether the employing unit or person attempted to induce the individual to waive any right under this chapter.
  - c. Whether the employing unit or person discriminated or retaliated against an individual because the individual claims benefits, participates in an audit or investigation by the department, testifies at a hearing under s. 108.09 or 108.10, or exercises any other right under this chapter.
4. The penalties assessed under this subdivision shall be determined under s. 108.10 and are in addition to any other penalties or fines permitted by law.

### 3. Effects of Proposed Change

- a. Policy. This proposal will likely result in the department completing a higher percentage of audits of employer accounts and should reduce delays in the audit process. This proposal should result in fewer misclassified workers, which should strengthen the unemployment insurance trust fund and ensure that employees receive full credit for their wages when employees file unemployment insurance benefit claims.
- b. Administrative. The audit and investigative staff will need to be trained on the changes resulting from this proposal. The department will be required to make technology changes in order to implement this proposal.
- c. Fiscal. A fiscal estimate is not yet available. This proposal is expected to have a positive effect on the unemployment insurance trust fund and the program integrity fund.

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#### **4. State and Federal Issues**

There are no known federal conformity issues with this proposal. The Department recommends that any changes to the unemployment insurance law be sent to the U.S. Department of Labor for conformity review.

#### **5. Proposed Effective/Applicability Date**

This proposal could be effective with other changes made as part of the agreed bill cycle, but the effective date may be delayed in order for the Department to implement certain required technology changes for this proposal.