



State of Wisconsin
2015 - 2016 LEGISLATURE

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LRB-2020/14

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT to repeal** 108.04 (8) (e) and 108.062 (7); **to renumber and amend**
2 108.04 (11) (g), 108.04 (12) (f) 1. and 108.04 (12) (f) 2.; **to amend** 108.04 (1) (bm),
3 108.04 (2) (h), 108.04 (7) (c), 108.04 (7) (h), 108.04 (16) (b), 108.062 (6) (a), 108.14
4 (8n) (e), 108.141 (7) (a), 108.16 (6) (L), 108.16 (6m) (g), 108.16 (10), 108.22 (8)
5 (b) 1. d. and 108.22 (9); **to repeal and recreate** 108.04 (1) (b); and **to create**
6 108.04 (7) (cg), 108.04 (11) (g) 2. and 3., 108.04 (12) (f) 1m., 108.04 (12) (f) 2m.,
7 108.04 (12) (f) 3. b. to d., 108.04 (13) (g) and 108.22 (1r) of the statutes; **relating**
8 **to:** various changes to the unemployment insurance law.

Analysis by the Legislative Reference Bureau

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

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 (act of concealment), the claimant is ineligible for benefits in an amount ranging from 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:

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. The bill provides for a rebuttable presumption that a claimant has committed an act of concealment if the claimant, in response to such an inquiry, makes a false statement or representation regarding a material fact relating to his or her eligibility for benefits or regarding his or her wages earned or hours worked in a given week, which the claimant may rebut with competent evidence that the claimant did not intentionally mislead DWD. The bill, however, provides for limitations on what may be considered competent evidence to rebut the presumption.

3. Specifically provides that it is not a prerequisite to a finding that a claimant committed an act of concealment that the 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.

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 (LLC) 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

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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.

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.

Recovery of employer UI debts under Treasury Offset Program

Current state law allows DWD to recoup certain UI benefit overpayments made to claimants by offsetting the amount of an overpayment against a federal tax refund through the federal Treasury Offset Program (TOP), but does not permit DWD to similarly recoup UI debts owed by employers. Under current federal law, however, a state *must* act to recover through the TOP certain UI-related debts that remain uncollected for one year or more, including those of both employers and claimants. This bill allows DWD to offset a UI debt found to be due to DWD by an employer against a federal tax refund through the TOP.

Work-share programs

Under current law, any employer may create a work-share program, defined as a program approved by the Department of Workforce Development under which the hours of work of employees in a work unit are reduced in lieu of the layoffs of two or more employees in the work unit. An employee included under a work-share program who otherwise qualifies to receive regular UI benefits must receive a UI benefit payment for each week that the employee is included under the program. The amount of the benefit payment is the employee's regular UI benefit amount

multiplied by the employee's proportionate reduction in hours for that week under the work-share program (work-share benefits). Current law also provides, however, that an employee included under a work-share program who would otherwise be paid benefits for any week under the UI law's partial benefits formula (partial benefits) must instead receive a benefit payment for that week in the amount payable to the employee under that formula, if that amount is higher than the work-share benefits amount.

Under this bill, employees included under a work-share program may only be paid work-share benefits, and not partial benefits.

Determinations in combined-wage claims

Under federal law, a state must, as a condition of approval of its UI law by the U.S. Secretary of Labor, participate in arrangements for the payment of UI benefits on the basis of combining an individual's wages and employment covered under that state's UI law with wages and employment covered under another state's UI law (combined-wage claim). Also under federal law, as a condition of employers being able to receive certain tax credits under the Federal Unemployment Tax Act, a state may not relieve an employer's account of certain erroneous charges in certain cases where the employer was at fault.

Under current state law, DWD may, in connection with any issue arising under the UI law as to the status or liability of an employer in this state, issue an appealable determination as to that issue. This bill allows DWD to similarly issue an appealable determination that an out-of-state employer in a combined-wage claim is at fault for the erroneous payment of benefits under a combined-wage claim.

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

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

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

8 **SECTION 2.** 108.04 (1) (bm) of the statutes is amended to read:

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

8 **SECTION 3.** 108.04 (2) (h) of the statutes is amended to read:

9 108.04 (2) (h) A claimant shall, when the claimant first files a claim for benefits
10 under this chapter and during each subsequent week the claimant files for benefits
11 under this chapter, inform the department whether he or she is receiving social
12 security disability insurance ~~benefits under 42 USC ch. 7 subch. II~~ payments, as
13 defined in sub. (12) (f) 2m.

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

15 108.04 (7) (c) Paragraph (a) does not apply if the department determines that
16 the employee terminated his or her work but had no reasonable alternative because
17 ~~the employee was unable to do his or her work, or that the employee terminated his~~
18 ~~or her work~~ because of the verified illness or disability of a ~~member of his or her~~
19 ~~immediate family and the verified illness or disability reasonably necessitates the~~
20 ~~care of the family member for a period of time that is longer than the employer is~~
21 ~~willing to grant leave; but if the department determines that the employee is unable~~
22 ~~to work or unavailable for work, the employee is ineligible to receive benefits while~~
23 ~~such inability or unavailability continues~~ the employee.

24 **SECTION 5.** 108.04 (7) (cg) of the statutes is created to read:

1 108.04 (7) (cg) Paragraph (a) does not apply if the department determines that
2 the employee terminated his or her work because of the verified illness or disability
3 of a member of his or her immediate family and the verified illness or disability
4 reasonably necessitates the care of the family member for a period of time that is
5 longer than the employer is willing to grant leave.

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

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

12 **SECTION 7.** 108.04 (8) (e) of the statutes is repealed.

13 **SECTION 8.** 108.04 (11) (g) of the statutes is renumbered 108.04 (11) (g) 1. and
14 amended to read:

15 108.04 (11) (g) 1. ~~For purposes of~~ In this subsection, “conceal” means to
16 intentionally mislead ~~or defraud~~ the department by withholding or hiding
17 information or making a false statement or misrepresentation.

18 **SECTION 9.** 108.04 (11) (g) 2. and 3. of the statutes are created to read:

19 108.04 (11) (g) 2. A claimant has a duty of care to provide an accurate and
20 complete response to each inquiry made by the department in connection with his
21 or her receipt of benefits. If a claimant, in response to such an inquiry, makes a false
22 statement or representation regarding a material fact relating to his or her eligibility
23 for benefits or regarding his or her wages earned or paid or payable or hours worked
24 in a given week, there is a rebuttable presumption that the claimant has violated par.
25 (a) or (b), whichever is applicable. A claimant may rebut that presumption with

1 competent evidence that the claimant did not intentionally mislead the department,
2 but competent evidence does not include evidence that a claimant provided false or
3 misleading answers due to any of the following:

4 a. The claimant's failure to read or follow instructions or other communications
5 of the department related to a claim for benefits.

6 b. The claimant's reliance on the statements or representations of persons
7 other than an employee of the department who is authorized to provide advice
8 regarding the claimant's claim for benefits.

9 c. The claimant's limitation or disability, if the claimant did not, prior to the
10 issuance of the initial determination under s. 108.09, bring that limitation or
11 disability to the attention of an employee of the department who is authorized to
12 provide service to claimants and provide competent evidence to the department of
13 that disability or limitation.

14 3. It is not a prerequisite to a finding that a claimant concealed a material fact
15 relating to his or her eligibility for benefits as provided in par. (a) or concealed wages
16 or hours as provided in par. (b) that the claimant had an intent or design to receive
17 benefits to which the claimant knows he or she was not entitled.

18 **SECTION 10.** 108.04 (12) (f) 1. of the statutes is renumbered 108.04 (12) (f) 3.
19 a. and amended to read:

20 108.04 (12) (f) 3. a. ~~Any~~ Except as provided in subd. 3. b. to d., an individual
21 ~~who actually receives social security disability insurance benefits under 42 USC ch.~~
22 ~~7 subch. II in a given week is ineligible for benefits paid or payable in that same week~~
23 ~~under this chapter for each week in the entire month in which a social security~~
24 ~~disability insurance payment is issued to the individual.~~

25 **SECTION 11.** 108.04 (12) (f) 1m. of the statutes is created to read:

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

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

6 108.04 (12) (f) 4. Information that the department receives or acquires from the
7 federal social security administration ~~that an individual is receiving regarding the~~
8 issuance of social security disability insurance benefits under 42 USC ch. 7 subch.
9 II in a given week payments is considered conclusive, absent clear and convincing
10 evidence that the information was erroneous.

11 **SECTION 13.** 108.04 (12) (f) 2m. of the statutes is created to read:

12 108.04 (12) (f) 2m. In this paragraph, “social security disability insurance
13 payment” means a payment of social security disability insurance benefits under 42
14 USC ch. 7 subch. II.

15 **SECTION 14.** 108.04 (12) (f) 3. b. to d. of the statutes are created to read:

16 108.04 (12) (f) 3. b. In the first month a social security disability insurance
17 payment is first issued to an individual, the individual is ineligible for benefits under
18 this chapter for each week beginning with the week the social security disability
19 insurance payment is issued to the individual and all subsequent weeks in that
20 month.

21 c. Following a cessation of social security disability insurance payments to an
22 individual and upon the individual again being issued a social security disability
23 insurance payment, the individual is ineligible for benefits under this chapter for
24 each week beginning with the week the social security disability insurance payment
25 is issued to the individual and all subsequent weeks in that month.

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

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

6 108.04 (13) (g) 1. In this paragraph:

7 a. “Combined–wage claim” means a claim for benefits under this chapter that
8 is filed pursuant to a reciprocal arrangement entered into under s. 108.14 (8n).

9 b. “Out–of–state employer” means a person that employs an individual who
10 files a combined–wage claim in which the wages and employment from that person
11 are covered under the unemployment compensation law of another state.

12 2. The department may issue a determination that an out–of–state employer
13 is at fault for the erroneous payment of benefits under a combined–wage claim in the
14 same manner as the department issues determinations under s. 108.10, if the
15 unemployment insurance account of the out–of–state employer is potentially
16 chargeable.

17 3. A determination issued under subd. 2. is subject to s. 108.10 and may be
18 appealed in the same manner as a determination issued under s. 108.10.

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

20 108.04 (16) (b) The department shall not apply any benefit reduction or
21 disqualification under sub. (1) (b), (2) (a), or (7) (c), ~~or (8) (e) (cg)~~ or s. 108.141 (3g) (d)
22 that is not the result of approved training while an individual is enrolled in approved
23 training.

24 **SECTION 17.** 108.062 (6) (a) of the statutes is amended to read:

1 108.062 (6) (a) Except as provided in par. (b) and sub. (7), an employee who is
 2 included under a work-share program and who qualifies to receive regular benefits
 3 for any week during the effective period of the program shall receive a benefit
 4 payment for each week that the employee is included under the program in an
 5 amount equal to the employee's regular benefit amount under s. 108.05 (1)
 6 multiplied by the employee's proportionate reduction in hours worked for that week
 7 as a result of the work-share program. Such an employee shall receive benefits as
 8 calculated under this paragraph and not as provided under s. 108.05 (3).

9 **SECTION 18.** 108.062 (7) of the statutes is repealed.

10 **SECTION 19.** 108.14 (8n) (e) of the statutes ^{is affected by 2015 Wisconsin Act 55} is amended to read:

11 108.14 (8n) (e) The department shall charge this state's share of any benefits
 12 paid under this subsection to the account of each employer by which the employee
 13 claiming benefits was employed in the applicable base period, in proportion to the
 14 total amount of wages he or she earned from each employer in the base period, except
 15 that if s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) or ^(b) 108.07
 16 (3), (3r), or (5) (b) ^{, or 108.133 (3) (f)} would have applied to employment by such an employer who is
 17 subject to the contribution requirements of ss. 108.17 and 108.18, the department
 18 shall charge the share of benefits based on employment with that employer to the
 19 fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07 (3) would have applied
 20 to an employer that is not subject to the contribution requirements of ss. 108.17 and
 21 108.18, the department shall charge the share of benefits based on that employment
 22 in accordance with s. 108.07 (5) (a) and (b). The department shall also charge the
 23 fund's balancing account with any other state's share of such benefits pending
 24 reimbursement by that state.

25 **SECTION 20.** 108.141 (7) (a) of the statutes ^{is affected by 2015 Wisconsin Act 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 108.07
7 (3), (3r), or (5) (b) ^{or 108.133 (3) (f)} applies to the fund's balancing account.

8 **SECTION 21.** 108.16 (6) (L) of the statutes is amended to read:

9 108.16 (6) (L) The amount of any overpayments that are recovered by the
10 department by setoff pursuant to s. 71.93 or the amount of any overpayments
11 resulting from fraud or failure to report earnings that are recovered by the
12 department by offset pursuant to ~~section 26 USC 6402 (f) of the federal Internal~~
13 ~~Revenue Code in effect on June 1, 2009.~~

14 **SECTION 22.** 108.16 (6m) (g) of the statutes is amended to read:

15 108.16 (6m) (g) Any payments of fees or expenses assessed by the U.S.
16 secretary of the treasury and charged to the department under section 26 USC 6402
17 ~~(f) of the federal Internal Revenue Code in effect on June 1, 2009.~~

18 **SECTION 23.** 108.16 (10) of the statutes is amended to read:

19 108.16 (10) All money withdrawn from the fund shall be used solely in the
20 payment of benefits, exclusive of expenses of administration, and for refunds of sums
21 erroneously paid into the fund, for refund of a positive net balance in an employer's
22 reimbursement account under ss. 108.15 (4) and 108.151 (5) on request by the
23 employer, for expenditures made pursuant to s. 108.161 and consistently with the
24 federal limitations applicable to s. 108.161, and for payment of fees and expenses for
25 collection of overpayments resulting from fraud or failure to report earnings that are

1 assessed by the U.S. secretary of the treasury and charged to the department under
2 section 26 USC 6402 (f) of the federal Internal Revenue Code in effect on June 1,
3 2009.

4 **SECTION 24.** 108.22 (1r) of the statutes is created to read:

5 108.22 (1r) If any employing unit or any individual who is found personally
6 liable under sub. (9) fails to pay to the department any amount found to be due it in
7 proceedings pursuant to s. 108.10, provided that no appeal or review permitted
8 under s. 108.10 is pending and that the time for taking an appeal or review has
9 expired, the department or any authorized representative may offset the amount
10 against a federal tax refund as provided in 26 USC 6402 (f).

11 **SECTION 25.** 108.22 (8) (b) 1. d. of the statutes is amended to read:

12 108.22 (8) (b) 1. d. If the overpayment results from fraud or failure to report
13 earnings, offsetting the amount of the overpayment against a federal tax refund as
14 provided in section 26 USC 6402 (f) of the federal Internal Revenue Code in effect on
15 June 1, 2009.

16 **SECTION 26.** 108.22 (9) of the statutes is amended to read:

17 108.22 (9) An individual who is an officer, employee, member ~~or~~, manager,
18 partner, or other responsible person holding at least ~~20%~~ 20 percent of the ownership
19 interest of a corporation ~~or of a~~, limited liability company, or other business
20 association subject to this chapter, and who has control or supervision of or
21 responsibility for filing any required contribution reports or making payment of
22 contributions, and who willfully fails to file such reports or to make such payments
23 to the department, or to ensure that such reports are filed or that such payments are
24 made, may be found personally liable for such amounts, including interest, tardy
25 payment or filing fees, costs and other fees, in the event that after proper proceedings

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1 for the collection of such amounts, as provided in this chapter, the corporation ~~or~~,
2 limited liability company, or other business association is unable to pay such
3 amounts to the department. Ownership interest of a corporation ~~or~~, limited liability
4 company, or other business association includes ownership or control, directly or
5 indirectly, by legally enforceable means or otherwise, by the individual, by the
6 individual's spouse or child, by the individual's parent if the individual is under age
7 18, or by a combination of 2 or more of them, and such ownership interest of a parent
8 corporation ~~or~~, limited liability company, or other business association of which the
9 corporation ~~or~~, limited liability company, or other business association unable to pay
10 such amounts is a wholly owned subsidiary. The personal liability of such officer,
11 employee, member ~~or~~, manager, partner, or other responsible person as provided in
12 this subsection survives dissolution, reorganization, bankruptcy, receivership,
13 assignment for the benefit of creditors, judicially confirmed extension or
14 composition, or any analogous situation of the corporation ~~or~~, limited liability
15 company, or other business association and shall be set forth in a determination or
16 decision issued under s. 108.10.

17 **SECTION 27. Initial applicability.**

18 (1) CONCEALMENT BY CLAIMANTS. The renumbering and amendment of section
19 108.04 (11) (g) of the statutes and the creation of section 108.04 (11) (g) 2. and 3. of
20 the statutes first apply to determinations issued under section 108.09 of the statutes
21 on the effective date of this subsection.

22 (2) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section
23 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes first applies
24 retroactively to determinations issued under section 108.09 of the statutes on the
25 effective date of this subsection.

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

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

8 (5) WORK-SHARE BENEFITS. The treatment of section 108.062 (6) (a) and (7) of
9 the statutes first applies to work-share plans submitted for approval on the effective
10 date of this subsection.

11 **SECTION 28. Effective dates.** This act takes effect on the first Sunday after
12 publication, except as follows:

13 (1) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section
14 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes and SECTION
15 27 (2) of this act take effect retroactively to January 5, 2014.

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FROM THE
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1 SECTION 1. 108.16 (10) of the statutes, as affected by 2015 Wisconsin Act ...
2 (this act), is amended to read:

3 108.16 (10) All money withdrawn from the fund shall be used solely in the
4 payment of benefits, exclusive of expenses of administration, and for refunds of sums
5 erroneously paid into the fund, for refund of a positive net balance in an employer's
6 reimbursement account under ss. 108.15 (4) and, 108.151 (5), and 108.152 (4) on
7 request by the employer, for expenditures made pursuant to s. 108.161 and
8 consistently with the federal limitations applicable to s. 108.161, and for payment
9 of fees and expenses for collection of overpayments resulting from fraud or failure to
10 report earnings that are assessed by the U.S. secretary of the treasury and charged
11 to the department under 26 USC 6402 (f).

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12 (0) REIMBURSABLE EMPLOYER IDENTITY THEFT CHARGING. The treatment of
13 sections 108.02 (21) (b), 108.04 (13) (d) 3. (intro.) and a. and 4. (intro.), a., and c.,
14 108.151 (4) (b), 108.152 (6) (a) (intro.), 108.155, 108.16 (6) (g), (6m) (i), (7m), and (10)
15 (by SECTION), 108.22 (1) (b) and (c) and (1m), and 108.225 (1) (a) of the statutes, the
16 renumbering and amendment of section 108.151 (3) (b) of the statutes, and the
17 creation of section 108.151 (3) (b) 2. of the statutes take effect on January 1, 2016.

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"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: MEB) (Date: 8/31/2015)

Note:

BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"

(exception: companion bills)



Please transfer the drafting file for
2011 LRB (For: Rep./Sen. _____)
to the drafting file for
2013 LRB (For: Rep./Sen. _____)

Done MEB

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 Please copy the drafting file for
2013 LRB - 2541 / _____ (include the version) (For: Rep./Sen. DWD)
²⁰¹⁵ and place it in the drafting file for
2013 LRB - 2020 (For: Rep./Sen. DWD)

 Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history ("guts") from the original file: _____



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2541/P4
MED:cjs&emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to renumber and amend* 108.151 (3) (b); *to amend* 108.02 (21) (b),
2 108.04 (13) (d) 3. (intro.) and a., 108.04 (13) (d) 4. (intro.) and a., 108.151 (4) (b),
3 108.152 (6) (a) (intro.), 108.16 (6) (g), 108.16 (7m), 108.16 (10), 108.22 (1) (b),
4 108.22 (1) (c), 108.22 (1m) and 108.225 (1) (a); and *to create* 108.04 (13) (d) 4.
5 c., 108.151 (3) (b) 2., 108.155 and 108.16 (6m) (i) of the statutes; **relating to:**
6 liability of reimbursable employers for identity theft under the unemployment
7 insurance law.

Analysis by the Legislative Reference Bureau

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 (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 another, pooled account in the fund known as the 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

This is law

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.

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

SECTION 1. 108.02 (21) (b) of the statutes is amended to read:

*Insert all
sections
in LRB-2020,
except see pp.
9411*

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

9 **SECTION 2.** 108.04 (13) (d) 3. (intro.) and a. of the statutes are amended to read:

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

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

18 **SECTION 3.** 108.04 (13) (d) 4. (intro.) and a. of the statutes are amended to read:

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

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

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

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

8 **SECTION 5.** 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 6.** 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 7.** 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 8.** 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 9.** 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 10.** 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 11.** 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 12.** 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 13.** 108.16 (10) of the statutes is amended to read:~~

9 ~~108.16 (10) All money withdrawn from the fund shall be used solely in the
10 payment of benefits, exclusive of expenses of administration, and for refunds of sums
11 erroneously paid into the fund, for refund of a positive net balance in an employer's
12 reimbursement account under ss. 108.15 (4) and, 108.151 (5), and 108.152 (4) on
13 request by the employer, for expenditures made pursuant to s. 108.161 and
14 consistently with the federal limitations applicable to s. 108.161, and for payment
15 of fees and expenses for collection of overpayments resulting from fraud or failure to
16 report earnings that are assessed by the U.S. secretary of the treasury under section
17 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.~~

18 **SECTION 14.** 108.22 (1) (b) of the statutes is amended to read:

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

24 **SECTION 15.** 108.22 (1) (c) of the statutes is amended to read:

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

9 **SECTION 16.** 108.22 (1^m) of the statutes is amended to read:

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

24 **SECTION 17.** 108.225 (1) (a) of the statutes is amended to read:

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

PGdn
LRB-2020/1444
MED:cjs&am emw

June 1, 2015

— Dte —

Besides what is noted in the draft, I mainly tried to adhere to the supplied phrasing. Let me know if you want to attempt to make the phrasing more internally consistent between the provisions on concealment.

Here is a list of the proposals in this draft:

D15-01 (SSDI and UI)

D15-02 (combined-wage claims)

D15-03 (Treasury Offset Program)

D15-05 (LLP partners' liability)

D15-07 (work-share benefits)

D15-08 (concealment)

D15-09 (A&A determinations)

^(B)
D15-04 (Reimbursable
employer identity theft benefits
charging)

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

LRB-2020/P6dn
MED:cjs&emw

September 1, 2015

Here is a list of the proposals in this draft:

D15-01 (SSDI and UI)

D15-02 (combined-wage claims)

D15-03 (Treasury Offset Program)

D15-04 (Reimbursable employer identity theft benefits charging)

D15-05 (LLP partners' liability)

D15-07 (work-share benefits)

D15-08 (concealment)

D15-09 (A&A determinations)

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State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

Appendix A

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2015 LRB-2020/P6 (For: DWD)

has been copied/added to the drafting file for

2015 LRB-3183 (For: DWD)

Are These "Companion Bills" ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 09/10/2015 (Per: MED)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the digital drafting file.



State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

Appendix A

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2015 LRB-2020/P6 (For: DWD)

has been copied/added to the drafting file for

2015 LRB-3185 (For: DWD)

Are These "Companion Bills" ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 09/10/2015 (Per: MED)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the digital drafting file.

"RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...


 DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN

(Request Made By: MED) (Date: 10 / 23 / 2015)

Note:

BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"


(exception: companion bills)

 Please transfer the drafting file for 2011 LRB (For: Rep. / Sen. 1)

to the drafting file for

2013 LRB (For: Rep. / Sen. _____)

----- **OR** -----

 Please copy the drafting file for 2013 LRB -2743 -2921 / _____ (include the version) (For: Rep. / Sen. DWD)

and place it in the drafting file for 2013 LRB -2020 (For: Rep. / Sen. DWD)

 Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history

("guts") from the original file: _____