



State of Wisconsin
2015 - 2016 LEGISLATURE

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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., 108.04 (12) (f) 2. and 108.151 (3) (b); **to amend**
3 108.02 (21) (b), 108.04 (1) (bm), 108.04 (2) (h), 108.04 (7) (c), 108.04 (7) (h),
4 108.04 (13) (d) 3. (intro.) and a., 108.04 (13) (d) 4. (intro.) and a., 108.04 (16) (b),
5 108.062 (6) (a), 108.14 (8n) (e), 108.141 (7) (a), 108.151 (4) (b), 108.152 (6) (a)
6 (intro.), 108.16 (6) (g), 108.16 (6) (L), 108.16 (6m) (g), 108.16 (7m), 108.16 (10),
7 108.16 (10), 108.22 (1) (b), 108.22 (1) (c), 108.22 (1m), 108.22 (8) (b) 1. d., 108.22
8 (9) and 108.225 (1) (a); **to repeal and recreate** 108.04 (1) (b); and **to create**
9 108.04 (7) (cg), 108.04 (11) (g) 2. and 3., 108.04 (12) (f) 1m., 108.04 (12) (f) 2m.,
10 108.04 (12) (f) 3. b. to d., 108.04 (13) (d) 4. c., 108.04 (13) (g), 108.151 (3) (b) 2.,
11 108.155, 108.16 (6m) (i) and 108.22 (1r) of the statutes; **relating to:** various
12 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.

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 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.

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 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

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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:

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SECTION 1

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 (1) (b) of the statutes is repealed and recreated to read:

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

16 **SECTION 3.** 108.04 (1) (bm) of the statutes is amended to read:

17 108.04 (1) (bm) For purposes of ~~par. pars.~~ (a) 1. and (b) 2., the department shall
18 treat the amount that the employee would have earned as wages for a given week in
19 available work as wages earned by the employee and shall apply the method
20 specified in s. 108.05 (3) (a) to compute the benefits payable to the employee. The
21 department shall estimate wages that an employee would have earned if it is not
22 possible to compute the exact amount of wages that would have been earned by the
23 employee.

24 **SECTION 4.** 108.04 (2) (h) of the statutes is amended to read:

1 108.04 (2) (h) A claimant shall, when the claimant first files a claim for benefits
2 under this chapter and during each subsequent week the claimant files for benefits
3 under this chapter, inform the department whether he or she is receiving social
4 security disability insurance ~~benefits under 42 USC ch. 7 subch. II payments, as~~
5 defined in sub. (12) (f) 2m.

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

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

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

17 108.04 (7) (cg) Paragraph (a) does not apply if the department determines that
18 the employee terminated his or her work because of the verified illness or disability
19 of a member of his or her immediate family and the verified illness or disability
20 reasonably necessitates the care of the family member for a period of time that is
21 longer than the employer is willing to grant leave.

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

23 108.04 (7) (h) The department shall charge to the fund's balancing account
24 benefits paid to an employee that are otherwise chargeable to the account of an
25 employer that is subject to the contribution requirements of ss. 108.17 and 108.18

1 if the employee voluntarily terminates employment with that employer and par. (a),
2 (c), ~~(cg)~~, (e), (L), (q), (s), or (t) applies.

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

X 4 **SECTION 9.** 108.04 (11) (g) of the statutes is renumbered 108.04 (11) (g) 1. and
5 amended to read:

6 108.04 (11) (g) 1. ~~For purposes of~~ In this subsection, “conceal” means to
7 intentionally mislead ~~or defraud~~ the department by withholding or hiding
8 information or making a false statement or misrepresentation.

9 **SECTION 10.** 108.04 (11) (g) 2. and 3. of the statutes are created to read:

X 10 108.04 (11) (g) 2. A claimant has a duty of care to provide an accurate and
11 complete response to each inquiry made by the department in connection with his
12 or her receipt of benefits. If a claimant, in response to such an inquiry, makes a false
13 statement or representation regarding a material fact relating to his or her eligibility
14 for benefits or regarding his or her wages earned or paid or payable or hours worked
15 in a given week, there is a rebuttable presumption that the claimant has violated par.
16 (a) or (b), whichever is applicable. A claimant may rebut that presumption with
17 competent evidence that the claimant did not intentionally mislead the department,
18 but competent evidence does not include evidence that a claimant provided false or
19 misleading answers due to any of the following:

20 a. The claimant’s failure to read or follow instructions or other communications
21 of the department related to a claim for benefits.

22 b. The claimant’s reliance on the statements or representations of persons
23 other than an employee of the department who is authorized to provide advice
24 regarding the claimant’s claim for benefits.

1 c. The claimant's limitation or disability, if the claimant did not, prior to the
2 issuance of the initial determination under s. 108.09, bring that limitation or
3 disability to the attention of an employee of the department who is authorized to
4 provide service to claimants and provide competent evidence to the department of
5 that disability or limitation.

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

10 **SECTION 11.** 108.04 (12) (f) 1. of the statutes is renumbered 108.04 (12) (f) 3. a.
11 and amended to read:

12 108.04 (12) (f) 3. a. Any Except as provided in subd. 3. b. to d., an individual
13 who actually receives social security disability insurance benefits under 42 USC ch.
14 7 subch. II in a given week is ineligible for benefits paid or payable in that same week
15 under this chapter for each week in the entire month in which a social security
16 disability insurance payment is issued to the individual.

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

18 108.04 (12) (f) 1m. The intent of the legislature in enacting this paragraph is
19 to prevent the payment of duplicative government benefits for the replacement of lost
20 earnings or income, regardless of an individual's ability to work.

21 **SECTION 13.** 108.04 (12) (f) 2. of the statutes is renumbered 108.04 (12) (f) 4.
22 and amended to read:

23 108.04 (12) (f) 4. Information that the department receives or acquires from the
24 federal social security administration that an individual is receiving regarding the
25 issuance of social security disability insurance benefits under 42 USC ch. 7 subch.

1 ~~II in a given week payments~~ is considered conclusive, absent clear and convincing
2 evidence that the information was erroneous.

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

4 108.04 (12) (f) 2m. In this paragraph, “social security disability insurance
5 payment” means a payment of social security disability insurance benefits under 42
6 USC ch. 7 subch. II.

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

8 108.04 (12) (f) 3. b. In the first month a social security disability insurance
9 payment is first issued to an individual, the individual is ineligible for benefits under
10 this chapter for each week beginning with the week the social security disability
11 insurance payment is issued to the individual and all subsequent weeks in that
12 month.

13 c. Following a cessation of social security disability insurance payments to an
14 individual and upon the individual again being issued a social security disability
15 insurance payment, the individual is ineligible for benefits under this chapter for
16 each week beginning with the week the social security disability insurance payment
17 is issued to the individual and all subsequent weeks in that month.

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

22 **SECTION 16.** 108.04 (13) (d) 3. (intro.) and a. of the statutes are amended to read:

23 108.04 (13) (d) 3. (intro.) To correct any erroneous payment not so adjusted that
24 was charged to the account of an employer that is subject to the contribution
25 requirements of ss. 108.17 and 108.18, the department shall do one of the following:

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

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

7 108.04 (13) (d) 4. (intro.) To correct any erroneous payment not so adjusted from
8 the account of an employer ~~which is a government unit, an Indian tribe, or a nonprofit~~
9 ~~organization and which has elected~~ that is subject to reimbursement financing, the
10 department shall do one of the following:

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

14 **SECTION 18.** 108.04 (13) (d) 4. c. of the statutes is created to read:

15 108.04 (13) (d) 4. c. If the erroneous payment resulted from a false statement
16 or representation about an individual's identity and the employer was not at fault
17 for the erroneous payment, restore the proper amount to the employer's account and
18 reimburse the balancing account by crediting to it benefits that would otherwise be
19 payable to, or cash recovered from, the individual who caused the erroneous
20 payment.

21 **SECTION 19.** 108.04 (13) (g) of the statutes is created to read:

22 108.04 (13) (g) 1. In this paragraph:

23 a. "Combined-wage claim" means a claim for benefits under this chapter that
24 is filed pursuant to a reciprocal arrangement entered into under s. 108.14 (8n).

1 b. "Out-of-state employer" means a person that employs an individual who
2 files a combined-wage claim in which the wages and employment from that person
3 are covered under the unemployment compensation law of another state.

4 2. The department may issue a determination that an out-of-state employer
5 is at fault for the erroneous payment of benefits under a combined-wage claim in the
6 same manner as the department issues determinations under s. 108.10, if the
7 unemployment insurance account of the out-of-state employer is potentially
8 chargeable.

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

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

12 108.04 (16) (b) The department shall not apply any benefit reduction or
13 disqualification under sub. (1) (b), (2) (a), or (7) (c), or ~~(8) (e)~~ (cg) or s. 108.141 (3g) (d)
14 that is not the result of approved training while an individual is enrolled in approved
15 training.

16 **SECTION 21.** 108.062 (6) (a) of the statutes is amended to read:

17 108.062 (6) (a) Except as provided in par. (b) ~~and sub. (7)~~, an employee who is
18 included under a work-share program and who qualifies to receive regular benefits
19 for any week during the effective period of the program shall receive a benefit
20 payment for each week that the employee is included under the program in an
21 amount equal to the employee's regular benefit amount under s. 108.05 (1)
22 multiplied by the employee's proportionate reduction in hours worked for that week
23 as a result of the work-share program. Such an employee shall receive benefits as
24 calculated under this paragraph and not as provided under s. 108.05 (3).

25 **SECTION 22.** 108.062 (7) of the statutes is repealed.

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1 **SECTION 23.** 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 24.** 108.141 (7) (a) of the statutes, as affected by 2015 Wisconsin Act ✓
18 55, is amended to read:

19 108.141 (7) (a) The department shall charge the state's share of each week of
20 extended benefits to each employer's account in proportion to the employer's share
21 of the total wages of the employee receiving the benefits in the employee's base
22 period, except that if the employer is subject to the contribution requirements of ss.
23 108.17 and 108.18 the department shall charge the share of extended benefits to
24 which s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),
25 108.07 (3), (3r), or (5) (b), or 108.133 (3) (f) applies to the fund's balancing account.

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1 **SECTION 25.** 108.151 (3) (b) of the statutes is renumbered 108.151 (3) (b) (intro.)
2 and amended to read:

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

- 6 1. The employer has failed to make the required reimbursement payments or,
7 3. The employer no longer satisfies the requirements of sub. (4), or whenever
8 s.
9 4. Section 108.16 (8) applies with respect to the employer.

10 **SECTION 26.** 108.151 (3) (b) 2. of the statutes is created to read:

11 108.151 (3) (b) 2. The employer has failed to pay the required assessments
12 authorized by sub. (7) or s. 108.155.

13 **SECTION 27.** 108.151 (4) (b) of the statutes is amended to read:

14 108.151 (4) (b) The fund's treasurer shall issue a receipt to the employer for its
15 deposit of assurance. Any assurances shall be retained by the fund's treasurer in
16 escrow, for the fund, until the employer's liability under its election is terminated,
17 at which time they shall be returned to the employer, less any deductions made under
18 this paragraph. The employer may at any time substitute assurances of equal or
19 greater value. The treasurer may, with 10 days' notice to the employer, liquidate the
20 assurances deposited to the extent necessary to satisfy any delinquent
21 reimbursements or assessments due under this section or s. 108.155 together with
22 any interest and any tardy filing fees due. The treasurer shall hold in escrow any
23 cash remaining from the sale of the assurances, without interest. The fund's
24 treasurer shall require the employer within 30 days following any liquidation of
25 deposited assurances to deposit sufficient additional assurances to make whole the

1 employer's deposit at the prior level. Any income from assurances held in escrow
2 shall inure to and be the property of the employer.

3 **SECTION 28.** 108.152 (6) (a) (intro.) of the statutes is amended to read:

4 108.152 (6) (a) (intro.) If an Indian tribe or tribal unit fails to pay required
5 contributions, reimbursements in lieu of contributions, penalties, interest, ~~or~~ fees,
6 or assessments within 90 days of the time that the department transmits to the tribe
7 a final notice of delinquency:

8 **SECTION 29.** 108.155 of the statutes is created to read:

9 **108.155 Liability of reimbursable employers for identity theft.** (1) In
10 this section:

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

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

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

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

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

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

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

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

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

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

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

17 (d) If the department assesses reimbursable employers under par. (c), the
18 department shall determine the amount of assessments to be levied as provided in
19 sub. (3), and the fund's treasurer shall notify reimbursable employers that the
20 assessment will be imposed. Except as provided in sub. (3) (c), the assessment shall
21 be payable by each reimbursable employer that is subject to this chapter as of the
22 date the assessment is imposed. Assessments imposed under this section shall be
23 credited to the balancing account.

24 **(3)** (a) The rate of an assessment imposed under sub. (2) (c) for a given calendar
25 year shall be a rate that, when applied to the payrolls of all reimbursable employers

1 for the preceding calendar year, will generate an amount equal to the total amount
2 to be assessed in that year as determined under sub. (2) (c).

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

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

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

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

23 (b) Terminate the reimbursable employer's election of reimbursement
24 financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s.

1 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under
2 s. 108.151 (2).

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

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

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

14 SECTION 30. 108.16 (6) (g) of the statutes is amended to read:

15 108.16 (6) (g) Any payment or other amount received for the balancing account
16 under s. 108.15 ~~or~~, 108.151, 108.152, or 108.155.

✓ 17 SECTION 31. 108.16 (6) (L) of the statutes is amended to read:

18 108.16 (6) (L) The amount of any overpayments that are recovered by the
19 department by setoff pursuant to s. 71.93 or the amount of any overpayments
20 resulting from fraud or failure to report earnings that are recovered by the
21 department by offset pursuant to section 26 USC 6402 (f) of the federal Internal
22 Revenue Code in effect on June 1, 2009.

23 SECTION 32. 108.16 (6m) (g) of the statutes is amended to read:

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

4 **SECTION 33.** 108.16 (6m) (i) of the statutes is created to read:

5 108.16 (6m) (i) Any amount restored to the account of an employer subject to
6 reimbursement financing under s. 108.04 (13) (d) 4.

7 **SECTION 34.** 108.16 (7m) of the statutes is amended to read:

8 108.16 (7m) The fund's treasurer may write off, by charging to the fund's
 9 balancing account, any delinquent contribution, reimbursement in lieu of
 10 contribution, assessment, tardy payment or filing fee, or interest for which the
 11 employer's liability to the fund was established under s. 108.10, upon receipt of
 12 certification by the department that reasonable efforts have been made to recover the
 13 delinquency and that the delinquency is uncollectible.

^ and 108.152(4)

14 **SECTION 35.** 108.16 (10) of the statutes is amended to read:

15 108.16 (10) All money withdrawn from the fund shall be used solely in the
 16 payment of benefits, exclusive of expenses of administration, and for refunds of sums
 17 erroneously paid into the fund, for refund of a positive net balance in an employer's
 18 reimbursement account under ss. 108.15 (4) ~~and~~ 108.151 (5) on request by the
 19 employer, for expenditures made pursuant to s. 108.161 and consistently with the
 20 federal limitations applicable to s. 108.161, and for payment of fees and expenses for
 21 collection of overpayments resulting from fraud or failure to report earnings that are
 22 assessed by the U.S. secretary of the treasury and charged to the department under
 23 section 26 USC 6402 (f) of the federal Internal Revenue Code in effect on June 1,

no strike 2009.

no strike

no strike

Keep

W

1 **SECTION 36.** 108.16 (10) of the statutes, as affected by 2015 Wisconsin Act
2 ^{Senate Bill 341/Assembly Bill 416}
3 (**this act**), is amended to read:

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

13 **SECTION 37.** 108.22 (1) (b) of the statutes is amended to read:

14 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),
15 108.151 (5) (f) or (7), 108.155, 108.16 (8), 108.17, or 108.205 would otherwise be a
16 Saturday, Sunday, or legal holiday under state or federal law, the due date is the next
17 following day which is not a Saturday, Sunday, or legal holiday under state or federal
18 law.

19 **SECTION 38.** 108.22 (1) (c) of the statutes is amended to read:

20 108.22 (1) (c) Any report or payment, except a payment required by s. 108.15
21 (5) (b) ~~or~~, 108.151 (5) (f) or (7), or 108.155, to which this subsection applies is
22 delinquent, within the meaning of par. (a), unless it is received by the department,
23 in the form prescribed by law or rule of the department, no later than its due date
24 as determined under par. (b). Any payment required by s. 108.15 (5) (b) ~~or~~, 108.151
25 (5) (f) or (7), or 108.155 is delinquent, within the meaning of par. (a), unless it is

1 received by the department, in the form prescribed by law, no later than the last day
2 of the month in which it is due.

3 **SECTION 39.** 108.22 (1m) of the statutes is amended to read:

4 108.22 (1m) If an employer owes any contributions, reimbursements, or
5 assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or
6 payments for forfeitures or other penalties to the department under this chapter and
7 fails to pay the amount owed, the department has a perfected lien upon the
8 employer's right, title, and interest in all of its real and personal property located in
9 this state in the amount finally determined to be owed, plus costs. Except where
10 creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien
11 is effective when the department issues a determination of the amount owed under
12 s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the
13 date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other
14 insolvency law, it shall become effective immediately upon expiration or removal of
15 such bar or stay. The perfected lien does not give the department priority over
16 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
17 whose interests have been recorded before the department's lien is recorded.

X 18 **SECTION 40.** 108.22 (1r) of the statutes is created to read:

19 108.22 (1r) If any employing unit or any individual who is found personally
20 liable under sub. (9) fails to pay to the department any amount found to be due it in
21 proceedings pursuant to s. 108.10, provided that no appeal or review permitted
22 under s. 108.10 is pending and that the time for taking an appeal or review has
23 expired, the department or any authorized representative may offset the amount
24 against a federal tax refund as provided in 26 USC 6402 (f).

X 25 **SECTION 41.** 108.22 (8) (b) 1. d. of the statutes is amended to read:

e

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

5 SECTION 42. 108.22 (9) of the statutes is amended to read:

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

1 this subsection survives dissolution, reorganization, bankruptcy, receivership,
2 assignment for the benefit of creditors, judicially confirmed extension or
3 composition, or any analogous situation of the corporation ~~or~~ limited liability
4 company, or other business association and shall be set forth in a determination or
5 decision issued under s. 108.10.

a.r.

6 SECTION 43. 108.225 (1) (a) of the statutes is amended to read:

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

11 SECTION 44. Initial applicability.

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2743
B

12 X (1) CONCEALMENT BY CLAIMANTS. The renumbering and amendment of section
13 108.04 (11) (g) of the statutes and the creation of section 108.04 (11) (g) 2. and 3. of
14 the statutes first apply to determinations issued under section 108.09 of the statutes
15 on the effective date of this subsection.

16 (2) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section
17 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes first applies
18 retroactively to determinations issued under section 108.09 of the statutes on the
19 effective date of this subsection.

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43

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

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

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

7 **SECTION 45. Effective dates.** This act takes effect on the first Sunday after
8 publication, except as follows:

9 (1) CONCURRENT RECEIPT OF SSDI AND UI BENEFITS. The treatment of section
10 108.04 (2) (h) and (12) (f) 1., 1m., 2., 2m., and 3. b. to d. of the statutes and SECTION
11 44 (2) of this act take effect retroactively to January 5, 2014.

12 (2) 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 36), 108.22 (1) (b) and (c) and (1m), and 108.225 (1) (a) of the statutes,
16 the 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.

18 (END)

Ins X4

October 2



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2743/P1
MED:cjs/jld/amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓

1 **AN ACT to affect** 2011 Wisconsin Act 198, section 4m, 2011 Wisconsin Act 198,
2 section 6m, 2011 Wisconsin Act 198, section 37m, 2011 Wisconsin Act 198,
3 section 47m (1) and 2013 Wisconsin Act 36, section 236m; **relating to:** the
4 unemployment insurance program integrity fund and related provisions.

Analysis by the Legislative Reference Bureau

Under current law, there is created a separate, nonlapsible trust fund designated as the program integrity fund. Moneys from the program integrity fund are appropriated to ~~the Department of Workforce Development (DWD)~~ for the payment of costs associated with program integrity activities. Also under current law, DWD must assess a penalty against a claimant for unemployment insurance benefits in an amount equal to 40 percent of the benefit payments erroneously paid to the claimant as a result of one or more acts of concealment performed by the claimant. Current law directs 62.5 percent of those penalties to the program integrity fund. 2013 Wisconsin Act 36 provides for the sunset (repeal) of the establishment of the program integrity fund and related provisions, effective January 1, 2034.

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anal-sub-sub
Repeal of program integrity fund sunset
BSES



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2921/P2
AJM:klm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

anal-sub-sub
BES
Elimination of statutory benefit rate tables and adjustment language

1 **AN ACT to repeal** 108.05 (1) (q), 108.05 (1) (r) (figure), 108.05 (2) and 108.05 (2m);
2 and **to amend** 108.05 (1) (r) and 108.141 (4) of the statutes; **relating to:** the
3 unemployment insurance weekly benefits rate schedule and rate adjustments.

Analysis by the Legislative Reference Bureau

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 the Department of Workforce Development (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.

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

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

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2921B

1 SECTION 2. 108.05 (1) (r) of the statutes is amended to read:

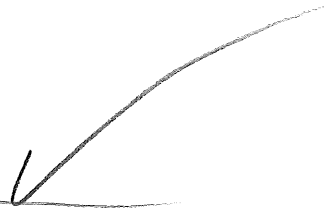
2 108.05 (1) (r) Except as provided in s. 108.062 (6) (a), each eligible employee
3 shall be paid benefits for each week of total unemployment that commences on or
4 after January 5, 2014, at the weekly benefit rate specified in this paragraph. Unless
5 sub. (1m) applies, the weekly benefit rate shall equal 4 percent of the employee's base
6 period wages that were paid during that quarter of the employee's base period in
7 which the employee was paid the highest total wages, rounded down to the nearest
8 whole dollar, except that, if that amount is less than ~~the minimum amount shown~~
9 ~~in the following schedule \$54~~, no benefits are payable to the employee and, if that
10 amount is more than ~~the maximum amount shown in the following schedule \$370~~,
11 the employee's weekly benefit rate shall be ~~the maximum amount shown in the~~
12 ~~following schedule \$370~~ and except that, if the employee's benefits are exhausted
13 during any week under s. 108.06 (1), the employee shall be paid the remaining
14 amount of benefits payable to the employee ~~in lieu of the amount shown in the~~
15 ~~following schedule: [See Figure 108.05 (1) (r) following]~~ under s. 108.06 (1). The
16 department shall publish on its Internet site a weekly benefit rate schedule of
17 quarterly wages and the corresponding weekly benefit rates as calculated in
18 accordance with this paragraph.

19 SECTION 3. 108.05 (1) (r) (figure) of the statutes is repealed.

20 SECTION 4. 108.05 (2) of the statutes is repealed.

21 SECTION 5. 108.05 (2m) of the statutes is repealed.

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2921B



22 SECTION 6. 108.141 (4) of the statutes is amended to read:

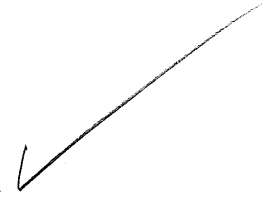
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2921
C

23 108.141 (4) WEEKLY EXTENDED BENEFIT RATE. The weekly extended benefit rate
24 payable to an individual for a week of total unemployment is the same as the rate
25 payable to the individual for regular benefits during his or her most recent benefit

End
1st
2921c 1 year as determined under s. 108.05 (1). ~~No adjustment of rates under s. 108.05 (2)~~
2 ~~applies to benefits payable under this section.~~

3

(END)



1 INS Analysis

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 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.

2

3 INS 5-1

4 SECTION 1. 108.02 (13) (k) of the statutes is amended to read:

5 108.02 (13) (k) "Employer" does not include a county department, an aging
6 unit, or, under s. 46.2785, a private agency that serves as a fiscal agent or contracts
7 with a fiscal intermediary to serve as a fiscal agent under s. 46.27 (5) (i), 46.272 (7)
8 (e), or 47.035 as to any individual performing services for a person receiving
9 long-term support services under s. 46.27 (5) (b), 46.272 (7) (b), 46.275, 46.277,
10 46.278, 46.2785, 46.286, 46.495, 51.42, or 51.437 or personal assistance services
11 under s. 47.02 (6) (c).

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105; 2003 a. 197; 2005 a. 25, 86, 149, 441; 2007 a. 20 s. 9121 (6) (a); 2007 a. 59; 2009 a. 180, 287; 2011 a. 32, 123; 2013 a. 20, 36, 104, 151; 2013 a. 173 s. 33; 2015 a. 55; s. 35.17 correction in (15) (k) 16.

Insert X1

Judicial review of UI decisions made by LIRC

Under current law, initial determinations regarding UI matters are made by DWD. Those determinations may be appealed to appeal tribunals (ALJs), and an ALJ's decision may be appealed to the Labor and Industry Review Commission (LIRC). 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.

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 an 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 an LIRC UI decision must be brought in the circuit court of the county where the plaintiff resides, except that if the plaintiff is DWD, the proceedings must be brought in the circuit court of 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.

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

ins X2
→

SECTION 1. 108.09 (4o) of the statutes is amended to read:

108.09 (4o) DEPARTMENTAL RECORDS RELATING TO BENEFIT CLAIMS. In any hearing before an appeal tribunal under this section, a departmental record relating to a claim for benefits, other than a report specified in sub. (4m), constitutes prima facie evidence, and shall be admissible to prove, that an employer provided or failed to provide to the department complete and correct information in a fact-finding investigation of the claim, notwithstanding that the record or a statement contained in the record may be uncorroborated hearsay and may constitute the sole basis upon which issue of the employer's failure is decided, if the parties appearing at the

hearing have been given an opportunity to review the record at or before the hearing and to rebut the information contained in the record. A record of the department that is admissible under this subsection shall be regarded as self authenticating and shall require no foundational or other testimony for its admissibility, unless the circumstances affirmatively indicate a lack of trustworthiness in the record. If such a record is admitted and made the basis of a decision, the record may constitute substantial evidence under ~~s. 102.23 (6)~~ sub. (7) (f). For purposes of this subsection, “departmental record” means a memorandum, report, record, document, or data compilation that has been made or maintained by employees of the department in the regular course of the department’s fact-finding investigation of a benefit claim, is contained in the department’s paper or electronic files of the benefit claim, and relates to the department’s investigative inquiries to an employer or statements or other matters submitted by the employer or its agent in connection with the fact-finding investigation of a benefit claim. A departmental record may not be admitted into evidence under this subsection or otherwise used under this subsection for any purpose other than to prove whether an employer provided or failed to provide to the department complete and correct information in a fact-finding investigation of a claim.

SECTION 2. 108.09 (7) (a) and (b) of the statutes are amended to read:

108.09 (7) (a) ~~The department or either~~ Any party that is not the department may commence an action for the judicial review of a decision of the commission under this chapter after exhausting the remedies provided under this section ~~if the party or the department has commenced such action in accordance with s. 102.23 within 30 days after a decision of the commission is mailed to a party’s last-known address.~~ The department may commence an action for the judicial review of a commission

decision under this section, but the department is not required to have been a party to the proceedings before the commission or to have exhausted the remedies provided under this section. In an action commenced under this section by a party that is not the department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve the commission as required by this subsection, the court shall dismiss the action.

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

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

108.09 (7) (c) 1. The findings of fact made by the commission acting within its powers shall, in the absence of fraud, be conclusive. The order of the commission is subject to review only as provided in this subsection and not under ch. 227 or s. 801.02. Within 30 days after the date of an order made by the commission, any party or the department may, by serving a complaint as provided in subd. 3. and filing the summons and complaint with the clerk of the circuit court, commence an action against the commission for judicial review of the order. In an action for judicial review of a commission order, every other party to the proceedings before the

commission shall be made a defendant. The department shall also be made a defendant if the department is not the plaintiff. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any order, the circuit court may extend the time in which an action may be commenced by an additional 30 days.

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

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

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

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

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

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

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

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

(f) If the commission's order depends on any fact found by the commission, the court shall not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order and remand the case to the commission if the commission's

order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.

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

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

SECTION 4. 108.09 (7) (d) of the statutes is renumbered 108.09 (7) (i) and amended to read:

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

SECTION 5. 108.10 (4) of the statutes is amended to read:

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

department, the department shall be a defendant and shall be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve them as required under s. 108.09 (7), the court shall dismiss the action. The scope of judicial review, and the manner thereof insofar as applicable, shall be the same as that provided in s. 108.09 (7). In an action commenced by an employing unit under this section, the department shall be an adverse party under s. 102.23 (1) (a) and shall be named as a party in the complaint commencing the action.

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SECTION 6. Initial applicability.

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

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SECTION 7. Effective date.

(1) JUDICIAL REVIEW CHANGES. The treatment of sections 108.09 (4o), (7) (a), (b), and (c) to (h) and 108.10 (4) of the statutes takes effect on the first day of the 5th month beginning after publication.

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and SECTION 7 (+) of this act take

