



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2015 LRB-2541/P4 (For: DWD)

has been copied/added to the drafting file for

2015 LRB-2020 (For: DWD)

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



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 08/31/2015 (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.

2015 DRAFTING REQUEST

Bill

Received: **6/1/2015** Received By: **mduchek**
For: **Workforce Development** Same as LRB:
May Contact: By/Representing: **Janell Knutson**
Subject: **Unemployment Insurance** Drafter: **mduchek**
Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email: **Janell.Knutson@dwd.wisconsin.gov**
Carbon copy (CC) to: **Andrew.Rubsam@dwd.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Reimbursable employer fraud charging

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 6/2/2015		_____			
/P1	mduchek 6/8/2015	csicilia 6/10/2015	_____	mbarman 6/4/2015		
/P2	mduchek 7/3/2015	csicilia 7/6/2015	_____	lparisi 6/10/2015		
/P3	mduchek	eweiss	_____	lparisi		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	8/10/2015	8/12/2015	_____	7/6/2015		
/P4			_____	srose		
			_____	8/12/2015		

FE Sent For:

<END>

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, May 29, 2015 9:46 AM
To: Duchek, Michael
Cc: Knutson, Janell - DWD; McHugh, Thomas - DWD; Rosenak, Mary J - DWD
Subject: D15-04 Reimbursable Employers Memo to UIAC option 1 with UIAC requested changes
Attachments: D15-04 Reimbursable Employers Memo to UIAC option 1 UIAC requested changes
052915.doc

Dear Mr. Duchek:

Attached is the revised D15-04 UIAC proposal. We have made some changes to the language as requested by the UIAC. Also we made some changes to hopefully satisfy the US-DOL.

Please prepare a standalone LRB draft version of this proposal so that we can send it to the US-DOL for conformity review. If they approve, we'll want to add it to the omnibus bill.

Thanks,

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D15-04
Reimbursable Employer Fraud Charging Issue
Revised Option 1: \$100,000 "Floor"

Date: June 18, 2015
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE

REIMBURSABLE EMPLOYER FRAUD CHARGING ISSUE

REVISED OPTION 1: \$100,000 FLOOR

1. Description of Proposed Change

Identity theft is a problem for state unemployment insurance (UI) agencies. Thieves assume the work history of claimants in order to receive UI benefits, which results in fraudulent charges to employers' accounts.

Identity thieves file fraudulent claims posing as claimants who work for employers subject to reimbursement financing as well as employers subject to contribution financing. Currently, charges to employers' accounts for UI benefit overpayments resulting from identity theft are handled differently for contribution and reimbursable employers.

Under Wis. Stat. § 108.04 (13) (d) 3. a., fraudulently obtained UI benefits are restored to the contribution employer's account and the UI benefit charges are transferred to the fund's balancing account. This represents a form of risk sharing among contribution employers.

For governmental units, Indian tribes, and nonprofit organizations that have elected reimbursement financing, the overpayment remains charged to the employer's account until it is recouped by the department. The reimbursable employer bears all the risk in identity theft cases.

The department proposes that the law treat reimbursable employers in a similar manner as provided under Wis. Stat. § 108.04 (13) (d) 3. a. for contribution employers.

The department will set aside \$2 million in the UI Trust Fund (plus interest), to pay for identity theft charges against reimbursable employers. The department projects the \$2 million plus interest will cover UI benefit charges to reimbursable employers due to identity theft for several years. If the balance of the set aside funds is less than \$100,000 the department also proposes that the law provide that all reimbursable employers be assessed to pay the UI benefit charges due to identity theft. The assessment would be similar to the Reimbursable Employer Debt Assessment that is authorized by Wis. Stat. § 108.151(7) to recover bad debt that results from uncollectible reimbursement financing.

The department will also report to the Council, on an annual basis, the amount of identity theft fraud charges to reimbursable employers as well as the remaining balance on the funds set aside.

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2. Proposed Statutory Language

Create Wis. Stat. § 108.153.

108.153 Liability of reimbursable employees for identity theft. (1) In this section:

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

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

(2) Except as provided in sub. (6), each reimbursable employer that is subject to this chapter as of the date that a rate of assessment is established under this section shall pay an assessment to the fund at a rate determined by the fund's treasurer under subs. (3) and (4).

(3) On the effective date of this section, the fund's treasurer shall set aside \$2,000,000 in the balancing account for accounting purposes. The fund's treasurer shall tally the amounts used to restore benefit charges to reimbursable employers under s. 108.04 (13) (d) 4. c, and deduct the charges from the amount set aside plus any interest calculated thereon. On June 30 of each year, the fund's treasurer shall determine whether the amount set aside, plus interest calculated thereon, is less than \$100,000 and, if the amount is less than \$100,000, the fund's treasurer shall determine the rate of an assessment to be levied under sub. (2). Except as provided in sub. (6), the assessment shall become payable by all reimbursable employers as provided in sub. (7). If the total amount of the assessment for all reimbursable employers would be less than \$20,000, the department may assess reimbursable employers under sub. (2). The fund's treasurer shall notify reimbursable employers that the provisions of s. 108.153(2) will become effective.

(4) The rate of assessment under this section for each calendar year shall be a rate, when applied to the payrolls of all reimbursable employers for the preceding calendar year, that will generate an amount equal to the amount that was allocated in the preceding calendar year to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c., but not more than \$200,000 for any year.

(5) Except as provided in sub. (6), the rate of each reimbursable employer's assessment under this section for any calendar year is the product of the rate determined under sub. (4), multiplied by the reimbursable employer's payroll for the preceding calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the department.

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

(7) The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days. Any assessment which remains unpaid after its applicable due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to pursuing action under the provisions of s. 108.22, the department may:

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

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

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

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

(9) The department shall annually report to the council on unemployment insurance the balance remaining of the amount set aside under sub. (3) and the amount of charges restored to Reimbursable employers' accounts under s. 108.04 (13) (d) 4. c.

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Reimbursable Employer Fraud Charging Issue

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Create Wis. Stat. §§ 108.16(6) (p) and 108.16(6m) (i) in order to authorize the department to credit the reimbursable employers' accounts and to deposit the assessments into the balancing account.

108.16 (6) (p). Any amounts received for the balancing account under s. 108.153.

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

Amend Wis. Stat. §§ 108.22(1)(c) and 108.22(1m) in order to authorize the department to charge interest on delinquent assessments and to take collection action on delinquent assessments.

108.22 (1) (c). Any report or payment, except a payment required by ss. 108.15 (5) (b), ~~or 108.151 (5) (f) or 108.151 (7) or 108.153~~, to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law or rule of the department, no later than its due date as determined under par. (b). Any payment required by ss. 108.15 (5) (b), ~~or 108.151 (5) (f) or 108.151 (7) or 108.153~~ is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law, no later than the last day of the month in which it is due.

108.22 (1m). If an employer owes any contributions, reimbursements or assessments under s. 108.15, 108.151, ~~108.153~~, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

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Reimbursable Employer Fraud Charging Issue

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Amend Wis. Stat. § 108.04(13) (d) 4. to authorize the department to Credit Reimbursable Employer's Accounts who are victims of identity theft.

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

a. ~~If recovery of an overpayment is permitted under s. 108.22 (8) (e), credit~~ Credit to the account benefits which would otherwise be payable to, or cash received from, the employee, ~~if recovery of an overpayment is permitted under s. 108.22 (8) (c); or~~

b. ~~If recovery of an overpayment is not permitted under s. 108.22 (8) (e), restore~~ Restore the proper amount to the employer's account and charge that amount in accordance with s. 108.07(5). ~~if recovery of an overpayment is not permitted under s. 108.22 (8) (c); or~~

c. Restore the proper amount to the reimbursable employer's account, if the erroneous payment resulted from a false statement or representation about an individual's identity and the reimbursable employer was not at fault for the erroneous payment and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment.

Amend the definition of payroll under Wis. Stat. § 108.02 (21) (b) to exclude s. 108.153. Payroll under s. 108.153 only applies to the definition of payroll under 108.02 (21) (a).

108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s. ss.~~ ss. 108.151 (7) (a) and 108.153, an employer's payroll for calendar years prior to 2009 includes only the first \$10,500 of wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of such wages, and for calendar years after 2012 includes only the first \$14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

Amend Wis. Stat. § 108.151(3)(b) to enable the department to terminate a non-profit's election of reimbursement financing if it fails to pay assessment.

108.151 (3) (b) The department may terminate any election as of the close of any calendar year if the department determines that the employer has failed to make the required

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reimbursement payments or no longer satisfies the requirements of sub. (4), or whenever s. 108.16 (8) applies, or fails to pay the required assessments authorized by s. 108.151(7) or 108.153.

3. Proposer's Reason for the Change

If an identity thief files a claim using an employee's identity and the employer reports this timely to the department, there is no fault by the employer. Identity thieves randomly file claims against both reimbursable and contribution employers. This proposal will relieve employers which are subject to reimbursement financing of being solely responsible to pay charges for which they are not responsible.

The proposal will represent risk sharing that is similar to what is provided to contribution employers.

4. Effects of Proposed Changes

- a. Policy. This proposal will provide for more equitable treatment of reimbursable employers whose accounts are charged as a result of identity theft.
- b. Administrative Impact. The administrative impact of this proposal is likely to be minor.
- c. Fiscal. See Attached Fiscal Estimate.

5. State and Federal Issues

A state's UI law must conform to, and the administration of its law must substantially comply with, applicable federal requirements.

The department is not currently aware of any federal conformity issues with this proposal.

The department recommends that the statutory language associated with this proposal be sent to the U.S. Department of Labor for review.

6. Proposed Effective/Applicability Date

This proposal should be effective beginning on January 1, 2016.



State of Wisconsin
2015 - 2016 LEGISLATURE

In 6-2
Out 6-4 if pass

LRB-2541/P1
MED:./

g's

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAN

Cor Cat

1 AN ACT ...; relating to: liability of reimbursable employers for identity theft
2 under the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

3 SECTION 1. 108.02 (21) (b) of the statutes is amended to read:
4 108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~ss.~~ ss. 108.151
5 (7) (a) and 108.155 (1) (a), an employer's payroll for calendar years prior to 2009
6 includes only the first \$10,500 of wages paid by an employer to an individual during
7 each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000
8 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of
9 such wages, and for calendar years after 2012 includes only the first \$14,000 of such

1 wages, including any wages paid for any work covered by the unemployment
2 insurance law of any other state, except as authorized in s. 108.17 (5).

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; s. 35.17 correction in (15) (k) 16.

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

4 108.04 (13) (d) 3. (intro.) To correct any erroneous payment not so adjusted that
5 was charged to the account of an employer that is subject to the contribution
6 requirements of ss. 108.17 and 108.18, the department shall do one of the following:

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

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 11, 287; 2011 a. 32, 123, 198, 236; 2013 a. 11, 20, 36; 2013 a. 173 ss. 13, 33; 2013 a. 276; s. 13.92 (2) (i); s. 35.17 correction in (2) (g) 2., (13) (d) 3. a.

X 12 **SECTION 3. 108.04 (13) (d) 4. (intro.) and a. of the statutes are amended to read:**

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

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

****NOTE: I added "unless subd. 4. c. applies" here because c. would seem to be an exception to this provision in that, instead of having the "account" be reimbursed for anything recovered from the employee, the balancing account be reimbursed. Therefore, there would not be a situation where both b. and c. would apply. Correct?

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 11, 287; 2011 a. 32, 123, 198, 236; 2013 a. 11, 20, 36; 2013 a. 173 ss. 13, 33; 2013 a. 276; s. 13.92 (2) (i); s. 35.17 correction in (2) (g) 2., (13) (d) 3. a.

^ X 1

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

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

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SECTION 5. 108.151 (3) (b) of the statutes is renumbered 108.151 (3) (b) (intro.) and amended to read:

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

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

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

§.

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

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1979 c. 52; 1983 a. 8; 1985 a. 17; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1995 a. 118; 1999 a. 15; 2005 a. 86; 2007 a. 59; 2009 a. 180.

X 17

SECTION 6. 108.151 (3) (b) 2. of the statutes is created to read:

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108.151 (3) (b) 4. The employer has failed to pay the required assessments authorized by sub. (7) or 108.155.

INS
3-19

***NOTE: I thought this would be easier to read if broken out. Let me know if you disagree.

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SECTION 7. 108.152 (6) (a) (intro.) of the statutes is amended to read:

108.152 (6) (a) (intro.) If an Indian tribe or tribal unit fails to pay required contributions, reimbursements in lieu of contributions, penalties, interest, or fees,

1 or assessments within 90 days of the time that the department transmits to the tribe
2 a final notice of delinquency:

History: 2001 a. 35, 105; 2005 a. 86; 2007 a. 59; 2009 a. 287.

***NOTE: I made this change to correspond with s. 108.155 (7) (c). OK? ✓

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

4 **108.155 Liability of reimbursable employers for identity theft.** (1) In
5 this section:

***NOTE: I assume, in the title, you meant "employers" not "employees." ✓

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

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

9 (2) Except as provided in sub. (6), each reimbursable employer that is subject
10 to this chapter as of the date that an assessment is established under this section
11 shall pay an assessment to the fund in an amount determined by the fund's treasurer
12 under subs. (4) and (5), if such an assessment is imposed under sub. (3).

***NOTE: Let me know if you want to amend s. 108.16 (7m) to reference
assessments.

13 (3) On the effective date of this subsection ... [LRB inserts date], the fund's
14 treasurer shall set aside \$2,000,000 in the balancing account for accounting
15 purposes. The fund's treasurer shall tally the amounts used to restore benefit
16 charges to reimbursable employers under s. 108.04 (13) (d) 4. c. and deduct the
17 charges from the amount set aside plus any interest calculated thereon. On the June
18 30 of each year after the effective date of this subsection ... [LRB inserts date], the
19 fund's treasurer shall determine whether the amount set aside, plus interest
20 calculated thereon, is less than \$100,000 and, if the amount is less than \$100,000,
21 the fund's treasurer shall determine the amount that was allocated in the preceding
22 calendar year to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. If

1 the latter amount is \$20,000 or more, the department shall assess reimbursable
2 employers under sub. (2). If that amount is less than \$20,000, the department may,
3 but is not required to, assess reimbursable employers under sub. (2). If the
4 department assesses reimbursable employers under this subsection, the department
5 shall determine the amount of assessments to be levied under sub. (2), and the fund's
6 treasurer shall notify reimbursable employers that the provisions of sub. (2) will
7 become effective. Except as provided in sub. (6), the assessment shall become
8 payable by all reimbursable employers as provided in sub. (7).

***NOTE: I added a sentence saying the assessment would be mandatory in the case of a figure more than \$20,000. OK?

9 (4) The rate of assessment under this section for each calendar year shall be
10 a rate, when applied to the payrolls of all reimbursable employers for the preceding
11 calendar year, that will generate an amount equal to the amount that was allocated
12 in the preceding calendar year to reimbursable employers' accounts under s. 108.04
13 (13) (d) 4. c., but not more than \$200,000 for any year.

***NOTE: I assume this is referring to employers that were reimbursable employers in the preceding calendar year, which may be somewhat different from the employers that are reimbursable employers at the time the assessment is calculated. Correct? Let me know if you think any clarifications are needed on that point.

14 (5) Except as provided in sub. (6), the amount of a reimbursable employer's
15 assessment under this section for any calendar year is the product of the rate
16 determined under sub. (4) and the reimbursable employer's payroll for the preceding
17 calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151
18 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the
19 department.

***NOTE: Here, I used the word "amount" instead of "rate," unlike what is in s. 108.151 (7) (e), because there it seemed to be using the word "rate" to have two different meanings, one to mean the assessment rate (i.e., 5%) and one to mean the actual amount assessed by applying the rate to the payroll, which I found confusing. I also omitted the

words "multiplied by" because when using the term "product," it is actually redundant to use "multiplied by."

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

6 (7) The department shall bill assessments under this section to a reimbursable
7 employer at its last known address in the month of September of each year and the
8 assessment shall be due to the department within 20 days after the date such bill is
9 mailed to it by the department. Any assessment which remains unpaid after its
10 applicable due date is a delinquent payment. If a reimbursable employer is
11 delinquent in paying an assessment under this section, in addition to pursuing
12 action under the provisions of s. 108.22, the department may do any of the following:

****NOTE: The instructions said assessments would be due "within 20 days" but didn't say within 20 days after what, so I added some language, which I copied from s. 108.15 (5) (b). OK?

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

15 (b) Terminate the reimbursable employer's election of reimbursement
16 financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s.
17 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under
18 s. 108.151 (2).

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

21 (8) If the payroll of a reimbursable employer for any quarter is adjusted to
22 decrease the amount of the payroll after an employment and wage report for the

Ins
6-12

1 reimbursable employer is filed under s. 108.205 (1), the department shall refund the
2 amount of any assessment that was overpaid by the reimbursable employer under
3 this section as a result of the adjustment.

4 (9) The department shall annually report to the council on unemployment
5 insurance the balance remaining of the amount set aside under sub. (3) and the
6 amount of charges restored to the accounts of reimbursable employers' accounts
7 under s. 108.04 (13) (d) 4. c.

8 SECTION 9. 108.16 (6) (p) of the statutes is created to read:

9 108.16 (6) (p) Any amounts recovered to make reimbursements under s. 108.04
10 (13) (d) 4. c.

****NOTE: Is this language OK?

11 SECTION 10. 108.16 (6m) (i) of the statutes is created to read:

12 108.16 (6m) (i) Any amount restored to the account of an employer subject to
13 reimbursement financing under s. 108.04 (13) (d) 4. c.

****NOTE: I tried to make the language better match s. 108.04 (13) (d) 4. c. here.

OK ? ←

14 SECTION 11. 108.22 (1) (b) of the statutes is amended to read:

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

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 36, 276.

****NOTE: This provision was not indicated to be amended, but it seemed to make sense to do so, consistent with par. (c), below. OK?

20 SECTION 12. 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.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373;
1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 36, 276.

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

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

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373;
1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35; 2003 a. 197; 2005 a. 86; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 36, 276.

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2541/P1ins
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INSERT 3-19

1 **SECTION 1.** 108.151 (4) (b) of the statutes is amended to read:
2 108.151 (4) (b) The fund's treasurer shall issue a receipt to the employer for its
3 deposit of assurance. Any assurances shall be retained by the fund's treasurer in
4 escrow, for the fund, until the employer's liability under its election is terminated,
5 at which time they shall be returned to the employer, less any deductions made under
6 this paragraph. The employer may at any time substitute assurances of equal or
7 greater value. The treasurer may, with 10 days' notice to the employer, liquidate the
8 assurances deposited to the extent necessary to satisfy any delinquent
9 reimbursements or assessments due under this section or s. 108.155 together with
10 any interest and any tardy filing fees due. The treasurer shall hold in escrow any
11 cash remaining from the sale of the assurances, without interest. The fund's
12 treasurer shall require the employer within 30 days following any liquidation of
13 deposited assurances to deposit sufficient additional assurances to make whole the
14 employer's deposit at the prior level. Any income from assurances held in escrow
15 shall inure to and be the property of the employer.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1979 c. 52; 1983 a. 8; 1985 a. 17; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1995 a. 118; 1999 a. 15; 2005 a. 86; 2007 a. 59; 2009 a. 180.

INSERT 6-22

****NOTE: Did you intentionally omit s. 108.225 here? Section 108.225 (1) (a) includes reimbursements and assessments under ss. 108.15, 108.151, and 108.152. Should that provision be amended to include s. 108.155?



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2541/PA P2
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In 6-8
Out 6-10 if poss.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Inserts

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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.), 108.22 (1) (b), 108.22 (1) (c) and 108.22 (1m); and to
4 create 108.04 (13) (d) 4. c., 108.151 (3) (b) 2., 108.155, 108.16 (6) (p) and 108.16
5 (6m) (i) of the statutes; relating to: liability of reimbursable employers for
6 identity theft under the unemployment insurance law.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

7 SECTION 1. 108.02 (21) (b) of the statutes is amended to read:
8 108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s.~~ ss. 108.151
9 (7) (a) and 108.155 (1) (a), an employer's payroll for calendar years prior to 2009

1 includes only the first \$10,500 of wages paid by an employer to an individual during
2 each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000
3 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of
4 such wages, and for calendar years after 2012 includes only the first \$14,000 of such
5 wages, including any wages paid for any work covered by the unemployment
6 insurance law of any other state, except as authorized in s. 108.17 (5).

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

8 108.04 (13) (d) 3. (intro.) To correct any erroneous payment not so adjusted that
9 was charged to the account of an employer that is subject to the contribution
10 requirements of ss. 108.17 and 108.18, the department shall do one of the following:

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

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

17 108.04 (13) (d) 4. (intro.) To correct any erroneous payment not so adjusted from
18 the account of an employer ~~which is a government unit, an Indian tribe, or a nonprofit~~
19 ~~organization and which has elected~~ that is subject to reimbursement financing, the
20 department shall do one of the following:

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

***NOTE: I added "unless subd. 4. c. applies" here because c. would seem to be an exception to this provision in that, instead of having the "account" be reimbursed for

anything recovered from the employee, the balancing account be reimbursed. Therefore, there would not be a situation where both b. and c. would apply. Correct?

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 §.
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 108.155.

****NOTE: I thought this would be easier to read if broken out. Let me know if you disagree.

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

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

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

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

****NOTE: I made this change to correspond with s. 108.155 (7) (c). OK?

18 **SECTION 9.** 108.155 of the statutes is created to read:

19 **108.155 Liability of reimbursable employers for identity theft.** (1) In
20 this section:

****NOTE: I assume, in the title, you meant "employers" not "employees."

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

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

Assessments imposed under this section shall be credited to the balancing account.

1 (2) Except as provided in sub. (6), each reimbursable employer that is subject
2 to this chapter as of the date that an assessment is established under this section
3 shall pay an assessment to the fund in an amount determined by the fund's treasurer
4 under subs. (4) and (5), if such an assessment is imposed under sub. (3).

****NOTE: Let me know if you want to amend s. 108.16 (7m) to reference assessments.

5 (3) (A) On the effective date of this subsection ... [LRB inserts date], the fund's
6 treasurer shall set aside \$2,000,000 in the balancing account for accounting
7 purposes. The fund's treasurer shall tally the amounts used to restore benefit
8 charges to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. and deduct
9 the charges from the amount set aside plus any interest calculated thereon. On the
10 June 30 of each year after the effective date of this subsection ... [LRB inserts date],
11 the fund's treasurer shall determine whether the amount set aside, plus interest
12 calculated thereon, is less than \$100,000 and, if the amount is less than \$100,000,
13 the fund's treasurer shall determine the amount that was allocated in the preceding
14 calendar year to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. If
15 the latter amount is \$20,000 or more, the department shall assess reimbursable
16 employers under sub. (2). If that amount is less than \$20,000, the department may,

17 but is not required to, assess reimbursable employers under sub. (2). If the
18 department assesses reimbursable employers under this subsection, the department
19 shall determine the amount of assessments to be levied under sub. (2), and the fund's
20 treasurer shall notify reimbursable employers that the provisions of sub. (2) will
21 become effective. Except as provided in sub. (6), the assessment shall become
22 payable by all reimbursable employers as provided in sub. (7).

****NOTE: I added a sentence saying the assessment would be mandatory in the case of a figure more than \$20,000. OK?

lws
5-4

(b) 1.

(c)

par. (b)

that,

1 (4) The rate of assessment under this section for each calendar year shall be
 2 a rate, when applied to the payrolls of all reimbursable employers for the preceding
 3 calendar year, that will generate an amount equal to the amount that was allocated
 4 in the preceding calendar year to reimbursable employers' accounts under s. 108.04
 5 (13) (d) 4. c. but not more than \$200,000 for any year

****NOTE: I assume this is referring to employers that were reimbursable
 employers in the preceding calendar year, which may be somewhat different from the
 employers that are reimbursable employers at the time the assessment is calculated.
 Correct? Let me know if you think any clarifications are needed on that point.

6 (5) Except as provided in sub. (6), the amount of a reimbursable employer's
 7 assessment under this section for any calendar year is the product of the rate
 8 determined under sub. (4) and the reimbursable employer's payroll for the preceding
 9 calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151
 10 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the
 11 department.

****NOTE: Here, I used the word "amount" instead of "rate," unlike what is in s.
 108.151 (7) (e), because there it seemed to be using the word "rate" to have two different
 meanings, one to mean the assessment rate (i.e., 5%) and one to mean the actual amount
 assessed by applying the rate to the payroll, which I found confusing. I also omitted the
 words "multiplied by" because when using the term "product," it is actually redundant
 to use "multiplied by."

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

17 (7) The department shall bill assessments under this section to a reimbursable
 18 employer at its last known address in the month of September of each year and the
 19 assessment shall be due to the department within 20 days after the date such bill is
 20 mailed by the department. Any assessment which remains unpaid after its

that

1 applicable due date is a delinquent payment. If a reimbursable employer is
 2 delinquent in paying an assessment under this section, in addition to pursuing
 3 action under the provisions of ~~s. 108.22~~ ^{ss. and 108.225} the department may do any of the following:

****NOTE: The instructions said assessments would be due "within 20 days" but didn't say within 20 days after what, so I added some language, which I copied from s. 108.15 (5) (b). OK?

****NOTE: Did you intentionally omit s. 108.225 here? Section 108.225 (1) (a) includes reimbursements and assessments under ss. 108.15, 108.151, and 108.152. Should that provision be amended to include s. 108.155?

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

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

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

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

17 (9) The department shall annually report to the council on unemployment
 18 insurance the balance remaining of the amount set aside under sub. (3) and the
 19 amount of charges restored to reimbursable employers' accounts under s. 108.04 (13)

20 (d) 4. c.

Ins 7-21

21 **SECTION 10.** 108.16 (6) (p) of the statutes is created to read:

1 108.16 (6) (p) Any amounts credited to the balancing account under s. 108.04
2 (13) (d) 4. c.

***NOTE: Is this language OK?

3 SECTION 11. 108.16 (6m) (i) of the statutes is created to read:

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

***NOTE: I tried to make the language better match s. 108.04 (13) (d) 4. c. here.
OK?

6 SECTION 12. 108.22 (1) (b) of the statutes is amended to read:

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

1-5
8-5

***NOTE: This provision was not indicated to be amended, but it seemed to make
sense to do so, consistent with par. (c), below. OK?

12 SECTION 13. 108.22 (1) (c) of the statutes is amended to read:

13 108.22 (1) (c) Any report or payment, except a payment required by s. 108.15
14 (5) (b) ~~or~~ 108.151 (5) (f) or (7), or 108.155, to which this subsection applies is
15 delinquent, within the meaning of par. (a), unless it is received by the department,
16 in the form prescribed by law or rule of the department, no later than its due date
17 as determined under par. (b). Any payment required by s. 108.15 (5) (b) ~~or~~ 108.151
18 (5) (f) or (7), or 108.155 is delinquent, within the meaning of par. (a), unless it is
19 received by the department, in the form prescribed by law, no later than the last day
20 of the month in which it is due.

21 SECTION 14. 108.22 (1m) of the statutes is amended to read:

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FROM THE
LEGISLATIVE REFERENCE BUREAU

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INSERT 5-4

***NOTE: I tried to rewrite this a bit for clarity. I said "imposed" instead of "established," because the date the assessment is established would be a one-time occurrence (i.e., when the amount set aside first drops below \$100,000), but the assessment would then be imposed annually, and would be so imposed upon only those employers that are reimbursable employers at that time, not ones that were reimbursable employers when the assessment was originally established. Correct? Still, I'm not entirely sure what date "imposed" would refer to. The date the calculation is made (June 30), or the date the assessments are billed (some time in September)? Let me know if this should be further clarified.

INSERT 5-13

1 , beginning that year, take action under par. (d).

INSERT 5-15

2 the amount that was allocated in the preceding calendar year to reimbursable employers'
3 accounts under s. 108.04 (13) (d) 4. c., when combined with amounts from any
4 postponed assessments under subd. 2.,

INSERT 5-16

5 2. If an assessment is not imposed under subd. 1., the department shall, subject
6 to subd. 3., postpone that year's assessment by adding the amount that was allocated
7 in the preceding calendar year to reimbursable employers' accounts under s. 108.04 (13) (d)
8 4. c., combined with amounts added from any previous years' postponed assessments
9 under this subdivision, to the amount allocated for the following year.

10 3. Notwithstanding subd. 1., if the fund's treasurer postponed assessments
11 under subd. ^{e 2}3. in each of the 4 previous years, the department shall assess
12 reimbursable employers under sub. (2) for the amount that was allocated in the
13 preceding calendar year to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c.,
14 combined with amounts from any postponed assessments under subd. 2., regardless
15 of whether the total amount to be assessed is \$20,000 or more.

INSERT 6-5

1 that was allocated in the preceding ^{calendar} year to reimbursable employers' accounts
2 under s. 108.04 (13) (d) 4. c., combined with amounts from any postponed
3 assessments under sub. (3) (b) 2. or, if that amount is more than \$200,000, a rate that
4 when so applied will generate \$200,000.

****NOTE: Note the draft does not requires amounts over \$200,000 to be rolled over.
OK? If they should be rolled over, I would have to incorporate that into sub. (3) (b).

INSERT 7-21

5 **SECTION 1.** 108.16 (6) (g) of the statutes is amended to read:
6 108.16 (6) (g) Any payment or other amount received for the balancing account
7 under s. 108.15 ~~or, 108.151, 108.152, or 108.155.~~

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 13, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 20, 36.

****NOTE: I added in s. 108.151 here as well, as there are amounts in that section that get credited to the balancing account. OK? This is worded broadly enough that it would capture both the assessments themselves, as well as any money recovered from the fraudster.

INSERT 8-5

****NOTE: I'm now not sure we need this provision. If the amount was restored to the employer's account, what is intended should happen? Section 108.15 (4) (b) talks about refunding overpayments, but s. 108.151 (5) (which also applies in s. 108.152) does not have this sentence about refunds, which suggests to me that refunding is only available for public employers under s. 108.15. Is the idea that the money would be refunded to the reimbursable employer, or that it would remain in the employer's "account" in the balancing account to be used for future benefit payments, or would it be dependant on what kind of employer it is, as those differences in current law appear to suggest?

8 **SECTION 2.** 108.16 (7m) of the statutes is amended to read:
9 108.16 (7m) The fund's treasurer may write off, by charging to the fund's
10 balancing account, any delinquent contribution, reimbursement in lieu of
11 contribution, assessment, tardy payment or filing fee, or interest for which the
12 employer's liability to the fund was established under s. 108.10, upon receipt of

1 certification by the department that reasonable efforts have been made to recover the
2 delinquency and that the delinquency is uncollectible.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 133; 1979 c. 52; 1979 c. 110 s. 60 (13); 1981 c. 36; 1983 a. 8, 99, 368; 1985 a. 17 ss. 39 to 56, 66; 1985 a. 29; 1987 a. 27; 1987 a. 38 ss. 107 to 111, 134; 1987 a. 255; 1989 a. 56 s. 259; 1989 a. 77, 359; 1991 a. 89, 221; 1993 a. 112, 373, 490, 492; 1995 a. 118, 225; 1997 a. 39; 1999 a. 15, 83; 2001 a. 35; 2003 a. 197; 2005 a. 86, 253; 2007 a. 59; 2009 a. 287; 2011 a. 198, 236; 2013 a. 20, 36.

****NOTE: Let me know if the reference to "assessment" here should be more specific.

INSERT 9-14

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

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

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109; 2003 a. 197; 2005 a. 86, 442; 2011 a. 198, 236; 2013 a. 36; 2013 a. 165 s. 115.



State of Wisconsin
2015 - 2016 LEGISLATURE

Stays, P2
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LRB-2541/P2
MED:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Inserts

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

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

8 SECTION 1. 108.02 (21) (b) of the statutes is amended to read:
9 108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s.~~ ss. 108.151
10 (7) (a) and 108.155 (1) (a), an employer's payroll for calendar years prior to 2009

1 includes only the first \$10,500 of wages paid by an employer to an individual during
2 each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000
3 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of
4 such wages, and for calendar years after 2012 includes only the first \$14,000 of such
5 wages, including any wages paid for any work covered by the unemployment
6 insurance law of any other state, except as authorized in s. 108.17 (5).

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

8 108.04 (13) (d) 3. (intro.) To correct any erroneous payment not so adjusted that
9 was charged to the account of an employer that is subject to the contribution
10 requirements of ss. 108.17 and 108.18, the department shall do one of the following:

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

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

17 108.04 (13) (d) 4. (intro.) To correct any erroneous payment not so adjusted from
18 the account of an employer ~~which is a government unit, an Indian tribe, or a nonprofit~~
19 ~~organization and which has elected~~ that is subject to reimbursement financing, the
20 department shall do one of the following:

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

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

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

7 **SECTION 5.** 108.151 (3) (b) of the statutes is renumbered 108.151 (3) (b) (intro.)
8 and amended to read:

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

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

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

14 s.

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

16 **SECTION 6.** 108.151 (3) (b) 2. of the statutes is created to read:

17 108.151 (3) (b) 2. The employer has failed to pay the required assessments
18 authorized by sub. (7) or ^{5.} 108.155.

19 **SECTION 7.** 108.151 (4) (b) of the statutes is amended to read:

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

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

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

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

14 **SECTION 9.** 108.155 of the statutes is created to read:

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

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

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

20 (2) Except as provided in sub. (6), ~~(each reimbursable employer that is subject~~
21 ~~to this chapter as of the date that an assessment is imposed) under sub. (3) (b) shall~~
22 ~~pay an assessment to the fund in an amount determined by the fund's treasurer~~
23 ~~under subs. (4) and (5).~~ Assessments imposed under this section shall be credited to
24 the balancing account.

More to p. 6

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A

We rewrote the substantially to clearly set out the calculation

****NOTE: I tried to rewrite this a bit for clarity. I said "imposed" instead of "established," because the date the assessment is established would be a one-time occurrence (i.e., when the amount set aside first drops below \$100,000), but the assessment would then be imposed annually, and would be so imposed upon only those employers that are reimbursable employers at that time, not ones that were reimbursable employers when the assessment was originally established. Correct? Still, I'm not entirely sure what date "imposed" would refer to. The date the calculation is made (June 30), or the date the assessments are billed (some time in September)? Let me know if this should be further clarified.

may be postponed work

X

e (2)

- 1 (3)(a) On the effective date of this paragraph [LRB inserts date], the fund's
- 2 treasurer shall set aside \$2,000,000 in the balancing account for accounting
- 3 purposes. The fund's treasurer shall tally the amounts used to restore benefit
- 4 charges to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. and deduct
- 5 the charges from the amount set aside plus any interest calculated thereon. On the
- 6 June 30 of each year after the effective date of this paragraph [LRB inserts date],
- 7 the fund's treasurer shall do all of the following:
- 8 1. Determine whether the amount set aside, plus interest calculated thereon,
- 9 is less than \$100,000 and, if it is less than \$100,000, the fund's treasurer shall,
- 10 beginning that year, take action under par. (b).
- 11 2. Determine the amount that was allocated in the preceding calendar year to
- 12 reimbursable employers' accounts under s. 108.04 (13) (d) 4. c.
- 13 (b) 1. If the the amount that was allocated in the preceding calendar year to
- 14 reimbursable employers' accounts under s. 108.04 (13) (d) 4. c., when combined with
- 15 amounts from any postponed assessments under subd. 2., is \$20,000 or more, the
- 16 department shall assess reimbursable employers under sub. (2).
- 17 2. If an assessment is not imposed under subd. 1., the department shall, subject
- 18 to subd. 3., postpone that year's assessment by adding the amount that was allocated
- 19 in the preceding calendar year to reimbursable employers' accounts under s. 108.04

1 (13) (d) 4. c., combined with amounts added from any previous years' postponed
2 assessments under this subdivision, to the amount allocated for the following year.

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3 3. Notwithstanding subd. 1., if the fund's treasurer postponed assessments
4 under subd. 2. in each of the 4 previous years, the department shall assess
5 reimbursable employers under sub. (2) for the amount that was allocated in the
6 preceding calendar year to reimbursable employers' accounts under s. 108.04 (13) (d)
7 4. c., combined with amounts from any postponed assessments under subd. 2.,
8 regardless of whether the total amount to be assessed is \$20,000 or more.

9 (d) (c) If the department assesses reimbursable employers under par. (b), the
10 department shall determine the amount of assessments to be levied, and the fund's
11 treasurer shall notify reimbursable employers that the assessment will be imposed.

e (c)
as provided in sub. (3)

12 Except as provided in sub. (6), the assessment shall be payable by all reimbursable
13 employers as provided in sub. (7).

e each reimbursable employer that is subject to

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from
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14 (4) The rate of assessment under this section for each calendar year shall be
15 a rate that, when applied to the payrolls of all reimbursable employers for the
16 preceding calendar year, will generate an amount equal to the amount that was
17 allocated in the preceding calendar year to reimbursable employers' accounts under
18 s. 108.04 (13) (d) 4. c., combined with amounts from any postponed assessments
19 under sub. (3) (b) 2. or, if that amount is more than \$200,000, a rate that when so
20 applied will generate \$200,000.

this chapter as of the date the assessment is imposed.

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B

****NOTE: Note the draft does not require amounts over \$200,000 to be rolled over.
OK? if they should be rolled over, I would have to incorporate that into sub. (3)(d)

to be assessed in that year as determined under sub. (2)(c)

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21 (5) Except as provided in sub. (6) the amount of a reimbursable employer's
22 assessment under this section for any calendar year is the product of the rate
23 determined under sub. (4) and the reimbursable employer's payroll for the preceding

e par. (c)

e imposed under sub. (2)(c)

e par. (a)

e a given

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1 calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151
2 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the
3 department.

X 4 (6) If a reimbursable employer would otherwise be assessed an amount less
5 than \$10 for a calendar year, the department shall, in lieu of requiring that
6 reimbursable employer to pay an assessment for that calendar year, apply the
7 amount that the reimbursable employer would have been required to pay to the other
8 reimbursable employers subject to an assessment on a pro rata basis.

X 9 (7) The department shall bill assessments under this section to a reimbursable
10 employer at its last known address in the month of September of each year and the
11 assessment shall be due to the department within 20 days after the date such bill is
12 mailed by the department. Any assessment that remains unpaid after its applicable
13 due date is a delinquent payment. If a reimbursable employer is delinquent in
14 paying an assessment under this section, in addition to pursuing action under the
15 provisions of ss. 108.22 and 108.225, the department may do any of the following:

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

18 (b) Terminate the reimbursable employer's election of reimbursement
19 financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s.
20 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under
21 s. 108.151 (2).

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

X 24 (8) If the payroll of a reimbursable employer for any quarter is adjusted to
25 decrease the amount of the payroll after an employment and wage report for the

1 reimbursable employer is filed under s. 108.205 (1), the department shall refund the
 2 amount of any assessment that was overpaid by the reimbursable employer under
 3 this section as a result of the adjustment.

× 4 ⁽⁹⁾ The department shall annually report to the council on unemployment
 5 insurance the balance remaining of the amount set aside under sub. ^{(2)(a)} (3) and the
 6 amount of charges restored to reimbursable employers' accounts under s. 108.04 (13)
 7 (d) 4. c.

8 **SECTION 10.** 108.16 (6) (g) of the statutes is amended to read:

9 108.16 (6) (g) Any payment or other amount received for the balancing account
 10 under s. 108.15 ~~or, 108.151, 108.152, or 108.155.~~

****NOTE: I added in s. 108.151 here as well, as there are amounts in that section that get credited to the balancing account. OK? This is worded broadly enough that it would capture both the assessments themselves, as well as any money recovered from the fraudster.

11 **SECTION 11.** 108.16 (6m) (i) of the statutes is created to read:

12 108.16 (6m) (i) Any amount restored to the account of an employer subject to
 13 reimbursement financing under s. 108.04 (13) (d) 4. c.

****NOTE: I'm now not sure we need this provision. If the amount was restored to the employer's account, what is intended should happen? Section 108.15 (4) (b) talks about refunding overpayments, but s. 108.151 (5) (which also applies in s. 108.152) does not have this sentence about refunds, which suggests to me that refunding is only available for public employers under s. 108.15. Is the idea that the money would be refunded to the reimbursable employer, or that it would remain in the employer's "account" in the balancing account to be used for future benefit payments, or would it be dependant on what kind of employer it is, as those differences in current law appear to suggest?

14 **SECTION 12.** 108.16 (7m) of the statutes is amended to read:

15 108.16 (7m) The fund's treasurer may write off, by charging to the fund's
 16 balancing account, any delinquent contribution, reimbursement in lieu of
 17 contribution, assessment, tardy payment or filing fee, or interest for which the
 18 employer's liability to the fund was established under s. 108.10, upon receipt of

1 certification by the department that reasonable efforts have been made to recover the
2 delinquency and that the delinquency is uncollectible.

****NOTE: Let me know if the reference to "assessment" here should be more
specific.

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

4 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),
5 108.151 (5) (f) or (7), 108.155, 108.16 (8), 108.17, or 108.205 would otherwise be a
6 Saturday, Sunday, or legal holiday under state or federal law, the due date is the next
7 following day which is not a Saturday, Sunday, or legal holiday under state or federal
8 law.

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

10 108.22 (1) (c) Any report or payment, except a payment required by s. 108.15
11 (5) (b) ~~or~~, 108.151 (5) (f) or (7), or 108.155, to which this subsection applies is
12 delinquent, within the meaning of par. (a), unless it is received by the department,
13 in the form prescribed by law or rule of the department, no later than its due date
14 as determined under par. (b). Any payment required by s. 108.15 (5) (b) ~~or~~, 108.151
15 (5) (f) or (7), or 108.155 is delinquent, within the meaning of par. (a), unless it is
16 received by the department, in the form prescribed by law, no later than the last day
17 of the month in which it is due.

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

19 108.22 (1m) If an employer owes any contributions, reimbursements, or
20 assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or
21 payments for forfeitures or other penalties to the department under this chapter and
22 fails to pay the amount owed, the department has a perfected lien upon the
23 employer's right, title, and interest in all of its real and personal property located in

1 this state in the amount finally determined to be owed, plus costs. Except where
2 creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien
3 is effective when the department issues a determination of the amount owed under
4 s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the
5 date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other
6 insolvency law, it shall become effective immediately upon expiration or removal of
7 such bar or stay. The perfected lien does not give the department priority over
8 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
9 whose interests have been recorded before the department's lien is recorded.

10 **SECTION 16.** 108.225 (1) (a) of the statutes is amended to read:

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

15 **SECTION 17. Effective date.**

16 (1) This act takes effect on January 1, 2016.

17 (END)

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB
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INS X

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

6 (b) On each June 30 ^e after the effective date of this paragraph [LRB inserts
7 ^e date], ^e the fund's treasurer shall do all of the following:
beginning with June 30, 2016

- 8 1. Determine the current result of the calculations described in par. (a).
9 2. Determine the amount that was allocated to reimbursable employers'
10 accounts under s. 108.04 (13) (d) 4. c. in the preceding calendar year. ^{first}

11 (c) In any year in which ^e the amount determined under par. (b) 1. is less than
12 \$100,000, the department shall proceed as follows:
Annually beginning with the year in which

13 1. If the sum of the amount determined under par. (b) 2. in that year and (the
14 amount of any postponed assessments ^e under subd. 2. ^{the current} is \$20,000 or more, the
15 department shall assess reimbursable employers under sub. (2) for the total amount ^{any}
16 but not to exceed \$200,000. ^{the lesser of \$200,000 or} ^{that sum}

17 2. If the sum of the amount determined under par. (b) 2. in that year and (the
18 amounts of any postponed assessments ^e under this subdivision is less than \$20,000
19 the department shall, subject to subd. 3., postpone that year's assessment ^e

20 3. If the ^{No B} department postponed assessments under subd. 2. in each of the 4
21 previous years, the department shall assess reimbursable employers under sub. (2)
22 for an amount equal to ^e the sum of the amount determined under par. (b) 2. in that
23 year and (the amounts of the postponed assessments ^e from each of the 4 previous
24 years, but not to exceed \$200,000. ^e ^{the current}

^e carried over under subd. 2. from the preceding year by carrying that sum over to the following year

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(c) → (d)

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INSERT A

****NOTE: We rewrote this provision substantially for better clarity and to clearly lay out the concept of the postponed assessments rolling over to the next year. In doing so, I eliminated what was sub. (2) in the /P1 version and moved the relevant language to other places in this section, because that provision was largely duplicative and I thought it would make more sense if the section started with the \$2,000,000 set aside and not with the assessment, since the assessment will only actually be imposed if and when the set aside drops to \$100,000. Also, I would note that we did have an idea of a way to avoid using the phrase "set aside" by instead just requiring certain calculations to be made and actions to be taken based upon those calculations, in case the concept of a "set aside" was still a potential concern. However, the language would be less straightforward. However, if you think such language would potentially be worth considering, let me know.

INSERT B

xxx Note: → Here I said "imposed" instead of "established," because the date the assessment is established would be a one-time occurrence (i.e., when the amount set aside first drops below \$100,000), but the assessment would then be imposed annually, and would be so imposed upon only those employers that are reimbursable employers at that time, not ones that were reimbursable employers when the assessment was originally established. Correct? Still, I'm not entirely sure what date "imposed" would refer to (i.e., on what date would the department determine what employers are currently reimbursable employers that will be subject to the assessment?). The date the calculation is made (June 30), the date the assessments are billed (some time in September), or some date in between? Let me know if this should be further clarified.