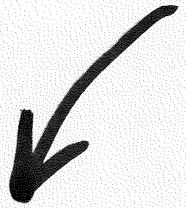





State of Wisconsin

LEGISLATIVE REFERENCE BUREAU



Appendix A ... segment II

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.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2541/P2
MED:cjs

stays
/p2
again

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to renumber and amend* 108.151 (3) (b); *to amend* 108.02 (21) (b),
2 108.04 (13) (d) 3. (intro.) and a., 108.04 (13) (d) 4. (intro.) and a., 108.151 (4) (b),
3 108.152 (6) (a) (intro.), 108.16 (6) (g), 108.16 (7m), 108.22 (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:

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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 s. 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.

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

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19 is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

****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 made 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.

Make

↑

though

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

- 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.

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

- 13 1. If the sum of the amount determined under par. (b) 2. in the current year and
14 any amount carried over under subd. 2. from the preceding year is \$20,000 or more,
15 the department shall assess reimbursable employers for the lesser of \$200,000 or
16 that sum.

 ***NOTE: Note the draft does not require amounts over \$200,000 to be rolled over.
OK?

- 17 2. If the sum of the amount determined under par. (b) 2. in the current year and
18 any amount carried over under this subdivision from the preceding year is less than
19 \$20,000 the department shall, subject to subd. 3., postpone the current year's
20 assessment by carrying that sum over to the following year.

- 21 3. If the department postponed assessments under subd. 2. in each of the 4
22 previous years, the department shall assess reimbursable employers for the lesser

1 of \$200,000 or the sum of the amount determined under par. (b) 2. in the current year
2 and the amount carried over under subd. 2. from the preceding year.

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

****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.

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

14 (b) Except as provided in par. (c), the amount of a reimbursable employer's
15 assessment imposed under sub. (2) (c) for a given calendar year is the product of the
16 rate determined under par. (a) and the reimbursable employer's payroll for the
17 preceding calendar year, as reported by the reimbursable employer under s. 108.15
18 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated
19 by the department.

1 (c) 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 (4) 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 by the department. Any assessment that remains unpaid after its applicable
10 due date is a delinquent payment. If a reimbursable employer is delinquent in
11 paying an assessment under this section, in addition to pursuing action under the
12 provisions of ss. 108.22 and 108.225, the department may do any of the following:

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 (5) 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
23 reimbursable employer is filed under s. 108.205 (1), the department shall refund the
24 amount of any assessment that was overpaid by the reimbursable employer under
25 this section as a result of the adjustment.

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

5 **SECTION 10.** 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.~~

 ****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.

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

9 108.16 (6m) (i) Any amount restored to the account of an employer subject to
10 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?

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

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

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

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

2 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),
3 108.151 (5) (f) or (7), 108.155, 108.16 (8), 108.17, or 108.205 would otherwise be a
4 Saturday, Sunday, or legal holiday under state or federal law, the due date is the next
5 following day which is not a Saturday, Sunday, or legal holiday under state or federal
6 law.

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

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

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

17 108.22 (1m) If an employer owes any contributions, reimbursements, or
18 assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or
19 payments for forfeitures or other penalties to the department under this chapter and
20 fails to pay the amount owed, the department has a perfected lien upon the
21 employer's right, title, and interest in all of its real and personal property located in
22 this state in the amount finally determined to be owed, plus costs. Except where
23 creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien
24 is effective when the department issues a determination of the amount owed under
25 s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the

1 date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other
2 insolvency law, it shall become effective immediately upon expiration or removal of
3 such bar or stay. The perfected lien does not give the department priority over
4 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
5 whose interests have been recorded before the department's lien is recorded.

6 **SECTION 16.** 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 17. Effective date.**

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

13 (END)

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Thursday, July 02, 2015 3:37 PM
To: Duchek, Michael
Subject: RE: Reimbursable ER id theft proposal

My responses below-

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Thursday, July 02, 2015 2:47 PM
To: Rubsam, Andrew J - DWD
Subject: RE: Reimbursable ER id theft proposal

Does that mean the language in s. 108.15(4)(b) about refunds is redundant in a sense? Maybe but I don't want to change it.

Also, in light of that, isn't it the case then that we don't need s. 108.16 (6m) (i)? (That provision was about charging *against* the balancing account (i.e., refunds)), correct? I still think we need it. I think it's needed for the mechanics of the proposal to restore the charges from the balancing account.

From: Rubsam, Andrew J - DWD [mailto:Andrew.Rubsam@dwd.wisconsin.gov]
Sent: Thursday, July 02, 2015 2:35 PM
To: Duchek, Michael
Subject: FW: Reimbursable ER id theft proposal

Mr. Duchek:

I talked to the tax staff and they think that the proposal is sufficient. They indicate that they can refund reimbursable employers under existing 108.16(10), but that we should amend that section to add "108.152" as set forth below.

After that, please prepare a "clean" draft of LRB-2541 for sending to US-DOL for conformity.

Thanks,
Andy Rubsam

108.16 Unemployment reserve fund.

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

federal Internal Revenue Code in effect on June 1, 2009.

Andy Rubsam, Esq.
Bureau of Legal Affairs
Unemployment Insurance Division
Wisconsin Department of Workforce Development
PO Box 8942
Madison, WI 53708
Tel: 608-261-9440
Fax: 608-266-8221
E-mail: andrew.rubsam@dwd.wi.gov



State of Wisconsin
2015 - 2016 LEGISLATURE

In 7-3

LRB-2541/12 P3
MED:cjs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SW
Refr
Con Cat
Direct
Inserts

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- 10 accounts under s. 108.04 (13) (d) 4. c. in the preceding calendar year.

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

13 1. If the sum of the amount determined under par. (b) 2. in the current year and
14 any amount carried over under subd. 2. ^{or 3.} from the preceding year is \$20,000 or more,
15 the department shall ^{subject to subd. 3.} assess reimbursable employers for the lesser of \$200,000 or
16 that sum. ✓

***NOTE: Note the draft does not require amounts over \$200,000 to be rolled over.
OK?

17 2. If the sum of the amount determined under par. (b) 2. in the current year and
18 any amount carried over under this subdivision ^{or subd. 3.} from the preceding year is less than
19 \$20,000 the department shall, subject to subd. ^{e 4.} (3), postpone the current year's
20 assessment by carrying that sum over to the following year.

Ins
5-20

21 3. If the department postponed assessments under subd. 2. in each of the 4
22 previous years, the department shall ^{subject to subd. 3.} assess reimbursable employers for the lesser

e 4.

1 of \$200,000 or the sum of the amount determined under par. (b) 2. in the current year
2 and the amount carried over under subd. 2. from the preceding year.

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

****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.

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

14 (b) Except as provided in par. (c), the amount of a reimbursable employer's
15 assessment imposed under sub. (2) (c) for a given calendar year is the product of the
16 rate determined under par. (a) and the reimbursable employer's payroll for the
17 preceding calendar year, as reported by the reimbursable employer under s. 108.15
18 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated
19 by the department.

1 (c) 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 (4) 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 by the department. Any assessment that remains unpaid after its applicable
10 due date is a delinquent payment. If a reimbursable employer is delinquent in
11 paying an assessment under this section, in addition to pursuing action under the
12 provisions of ss. 108.22 and 108.225, the department may do any of the following:

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 (5) 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
23 reimbursable employer is filed under s. 108.205 (1), the department shall refund the
24 amount of any assessment that was overpaid by the reimbursable employer under
25 this section as a result of the adjustment.

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

5 **SECTION 10.** 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.~~ *e*

****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.

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

9 108.16 **(6m)** (i) Any amount restored to the account of an employer subject to
10 reimbursement financing under s. 108.04 (13) (d) 4. **(c.)** *e*

****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? *e*

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

12 108.16 **(7m)** The fund's treasurer may write off, by charging to the fund's
13 balancing account, any delinquent contribution, reimbursement in lieu of
14 contribution, assessment, tardy payment or filing fee, or interest for which the
15 employer's liability to the fund was established under s. 108.10, upon receipt of
16 certification by the department that reasonable efforts have been made to recover the
17 delinquency and that the delinquency is uncollectible. *e lns 8-17*

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

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

2 108.22 (1) (b) If the due date of a report or payment under s. 108.15 (5) (b),
3 108.151 (5) (f) or (7), 108.155, 108.16 (8), 108.17, or 108.205 would otherwise be a
4 Saturday, Sunday, or legal holiday under state or federal law, the due date is the next
5 following day which is not a Saturday, Sunday, or legal holiday under state or federal
6 law.

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

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

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

17 108.22 (1m) If an employer owes any contributions, reimbursements, or
18 assessments under s. 108.15, 108.151, 108.155, or 108.19 (1m), interest, fees, or
19 payments for forfeitures or other penalties to the department under this chapter and
20 fails to pay the amount owed, the department has a perfected lien upon the
21 employer's right, title, and interest in all of its real and personal property located in
22 this state in the amount finally determined to be owed, plus costs. Except where
23 creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien
24 is effective when the department issues a determination of the amount owed under
25 s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the

1 date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other
2 insolvency law, it shall become effective immediately upon expiration or removal of
3 such bar or stay. The perfected lien does not give the department priority over
4 lienholders, mortgagees, purchasers for value, judgment creditors, and pledges
5 whose interests have been recorded before the department's lien is recorded.

6 **SECTION 16.** 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 17. Effective date.**

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

13 (END)

D-note

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2541/P3ins
MED:...

this subdivision of

INSERT 5-20

1
2 3. If the sum of the amount determined under par. (b) 2. in the current year and
3 any amount carried over under subd. 2. from the preceding year is more than
4 \$200,000, the department shall postpone the amount of the assessment that exceeds
5 \$200,000 by carrying that amount over to the following year.

6 INSERT 8-17

7 SECTION 1. 108.16 (10) of the statutes is amended to read:

8 108.16 (10) All money withdrawn from the fund shall be used solely in the
9 payment of benefits, exclusive of expenses of administration, and for refunds of sums
10 erroneously paid into the fund, for refund of a positive net balance in an employer's
11 reimbursement account under ss. 108.15 (4) ~~and~~, 108.151 (5), and 108.152 (4) on
12 request by the employer, for expenditures made pursuant to s. 108.161 and
13 consistently with the federal limitations applicable to s. 108.161, and for payment
14 of fees and expenses for collection of overpayments resulting from fraud or failure to
15 report earnings that are assessed by the U.S. secretary of the treasury under section
16 6402 (f) of the federal Internal Revenue Code in effect on June 1, 2009.

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.

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

LRB-2541/P3dn

MED:/.
/

Date

gjs

Andy:

Note that s. 108.16 (10) is also amended in LRB-2020. If this were added to LRB-2020, I would combine the changes from both drafts.

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

LRB-2541/P3dn
MED:cjs

July 6, 2015

Andy:

Note that s. 108.16 (10) is also amended in LRB-2020. If this were added to LRB-2020, I would combine the changes from both drafts.

Michael Duchek
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(608) 266-0130
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State of Wisconsin
2015 - 2016 LEGISLATURE

In 8-10
Out 8-13

LRB-2541/PS^{P4}
MED:cjs *gemw*

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

S.A. ✓
Xref ✓

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

INS. analysis →

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **SECTION 13.** 108.16 (10) of the statutes is amended to read:

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

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

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

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

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

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

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

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

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

5 **SECTION 18. Effective date.**

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

7 **(END)**

INSERT ANALYSIS

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 (taxes), 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.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-2541/P4
MED:cjs&emw

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

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

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

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

2. Through reimbursement financing, under which an employer reimburses the fund directly for benefits for employees of the employer who file claims for UI

benefits. Reimbursable financing is available only to public employers, nonprofit organizations, and Indian tribes. In the case of reimbursement financing, DWD maintains a reimbursement "employer account" for each employer as a "subaccount" of the fund's balancing account.

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

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

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

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

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

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

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

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

1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 s.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (d) 4. c.

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

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

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

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

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

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

8 **SECTION 13.** 108.16 (10) of the statutes is amended to read:

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

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

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

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

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

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

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

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

