



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix F ... segment I

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2015 LRB-4395/P3 (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: 01/18/2016 (Per: MED/AJM)

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: 1/12/2016 Received By: mduchek
For: Workforce Development Same as LRB:
May Contact: By/Representing: Andy/Janell
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: Aaron.McKean@legis.wisconsin.gov
Andrew.Rubsam@dwd.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

DWD proposal D15-08

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 1/12/2016	kfollett 1/12/2016	_____			
/P1			_____	sbasford 1/12/2016		
/P2	amckean 1/14/2016	kfollett 1/14/2016	_____	lparisi 1/14/2016		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3		kfollett 1/14/2016	_____ _____	lparisi 1/14/2016		

FE Sent For:

<END>

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 08, 2016 9:21 AM
To: Duchek, Michael
Subject: Appeals Modernization
Attachments: D15-06 Appeals Modernization MGMT EDITS chg 108.094e Jan 2016 2.doc

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

D15-06

Appeals Modernization

(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)

(Jan. 2016 Version with requested edits made on 1/7/16 1:00pm ver)

108.10 (2) Any hearing duly requested shall be held before an appeal tribunal established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable to the proceedings before such tribunal. The department may be a party in any proceedings before an appeal tribunal under this section. The employing unit or the department may petition the commission for review of the appeal tribunal's decision under s. 108.09 (6).

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

TO REPEAL 108.09 (2) (cm)

~~(cm) Unless a party has filed a timely request for review of the decision of an appeal tribunal by the commission or has commenced a timely action for the judicial review of the decision of the commission, the department may set aside or amend any appeal tribunal decision adverse to a claimant that has been issued under s. 108.09, 1995 stats., within the 4-year period immediately preceding January 4, 1998, or may reverse, modify or set aside any decision of the commission adverse to a claimant that has been issued under s. 108.09, 1995 stats., within the 4-year period immediately preceding January 4, 1998, if the department finds that the benefits paid or payable to the claimant have been affected by wages earned by the claimant which have not been paid, and the department is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.~~

D15-06
Appeals Modernization
(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)
(Jan. 2016 Version with requested edits made on 1/7/16 1:00pm ver)

TO AMEND DWD 140.13

DWD 140.13 Parties who fail to appear; general provisions. All parties who are required to appear in person shall appear at the hearing location no later than the starting time listed on the notice of hearing. If the appellant does not appear within ~~15~~10 minutes after the scheduled starting time of the hearing, the administrative law judge may dismiss the appeal. If the respondent does not appear within ~~5~~10 minutes after the scheduled starting time of the hearing and the appellant is present, the administrative law judge may commence the hearing. The provisions of s. 108.09 (4), Stats., apply as to the rights of the parties and procedures to be followed with regard to the failure of either party to appear at a hearing under this chapter.

D15-06
Appeals Modernization
(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)
(Jan. 2016 Version with requested edits made on 1/7/16 1:00pm ver)

TO CREATE 108.09 (4) (em)

(em) For the purposes of this section, "good cause" means a compelling reason that would give the party no alternative but to fail to appear.

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Appeals Modernization
(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)
(Jan. 2016 Version with requested edits made on 1/7/16 1:00pm ver)

1. Proposed Statutory Language

TO AMEND

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

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

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

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Appeals Modernization

(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)

(Jan. 2016 Version with requested edits made on 1/7/16 1:00pm ver)

108.09 (4) (d) Appellant's failure to appear. 1. If the appellant fails to appear at a hearing

held under this section and due notice of the hearing was electronically delivered or mailed to the appellant's last-known address, the appeal tribunal shall issue a decision dismissing the request for hearing unless subd. 2. applies.

2. If the appellant ~~delivers or transmits~~ submits a written explanation for failing to appear at a hearing to the department, which is received before a decision under subd. 1. is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the ,the department may so notify each party and schedule a hearing concerning whether there was good cause for the appellant's explanation of the failure to appear. The department shall electronically deliver or mail a copy of the appellant's explanation for failing to appear to the respondent. The respondent may deliver or transmit submit a written response to the appellant's explanation for failing to appear at the hearing to the department within 7 days of the department electronically delivering or mailing the appellant's explanation to the respondent. The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, If the appeal tribunal finds that the appellant's explanation for failing to appear, when taken as true and construed most favorably to the appellant, does not establish good cause for the failure to appear, the appeal tribunal shall issue a may dismiss the appeal without a hearing and acknowledge receipt of the explanation in its decision. containing this finding and dismissing the appeal. If, after hearing testimony, the appeal tribunal finds that the appellant's If that explanation, when taken as true and construed most favorably to the appellant, establishes good cause for the failure to appear, the appeal tribunal shall may issue a decision containing this finding without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning

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(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)

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any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.

3. If the appellant ~~delivers or transmits~~ submits a written explanation for nonappearance to the ~~department~~ appeal tribunal, which is received within 21 days after a decision under subd. 1. is electronically delivered or mailed, an appeal tribunal shall review the appellant's explanation for the failure to appear. . The department shall electronically deliver or mail a copy of the appellant's explanation for failing to appear to the respondent. The respondent may submit a written response to the appellant's explanation for failing to appear at the hearing to the department within 7 days of the department electronically delivering or mailing the appellant's explanation to the respondent. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal may issue a decision containing this finding without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision. ~~the appeal tribunal may set aside the decision dismissing the appeal and the department may schedule a hearing concerning whether there was good cause for the appellant's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation does not establish good cause for nonappearance, the appeal tribunal shall~~

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(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)

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~~issue a decision containing this finding and reinstating the dismissal. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation establishes good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding.~~

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

2. If the respondent ~~delivers or transmits~~ submits a written explanation for failing to appear at the hearing to the appeal tribunal, which is received before a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the respondent ~~delivers or transmits~~ submits a written explanation for nonappearance to the appeal tribunal which is received before a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall review the respondent's explanation of the failure to appear at the hearing. The department shall electronically deliver or mail a copy of the respondent's explanation for failing to appear to the appellant. The appellant may ~~deliver or transmit~~ submit a written response to the respondent's explanation for failing to appear at the hearing to the department within 7 days of the department electronically delivering or mailing the appellant's explanation to the appellant. If the appeal tribunal finds that the respondent's explanation does not establish good cause for the failure to

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~~appear, the appeal tribunal may issue a decision containing this finding without a hearing. the~~
~~department may so notify each party and may schedule a hearing concerning whether there was~~
~~good cause for the respondent's nonappearance. The department may also provisionally schedule~~
~~a hearing for further testimony concerning any matter in the determination. If, after hearing~~
~~testimony, the appeal tribunal finds that the respondent's explanation does not establish good~~
~~cause for nonappearance, the appeal tribunal shall issue a decision containing this finding. The~~
~~same or another appeal tribunal established by the department for this purpose shall also issue a~~
~~decision based on the testimony and other evidence presented at the hearing at which the~~
~~respondent failed to appear. If, after hearing testimony, the appeal tribunal finds that the~~
~~respondent's~~ If the respondent establishes good cause for failing to appear, the appeal tribunal
~~shall~~ may issue a decision containing this finding without a hearing. The same or another appeal
tribunal established by the department for this purpose shall then issue a decision under sub. (3)
(b) after conducting a hearing concerning any matter in the determination. If such a ~~2nd~~ hearing
is held concerning any matter in the determination, the appeal tribunal shall only consider
testimony and other evidence admitted at that hearing in making a decision.

3. If the respondent ~~delivers or transmits~~ submits a written explanation for failing to appear at the hearing to the appeal tribunal which is received within 21 days after a decision favorable to the respondent is electronically delivered or mailed under subd. 1., the appeal tribunal shall notify the respondent of receipt of the explanation and that since the decision was favorable to the respondent no further action concerning the explanation will be taken at that time. If the respondent ~~delivers or transmits~~ submits a written explanation for failing to appear at the hearing to the appeal tribunal which is received within 21 days after a decision unfavorable to the respondent is electronically delivered or mailed under subd. 1., an appeal tribunal shall

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Appeals Modernization

(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)

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review the respondent's explanation of the failure to appear. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal may issue a decision containing this finding without a hearing. If the respondent establishes good cause for failing to appear, the appeal tribunal may issue a decision containing this finding without a hearing. The appeal tribunal may set aside the original decision and the department may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If the original decision is not set aside, the appeal tribunal may, on its own motion, amend or set aside that decision within 21 days after the decision concerning whether there was good cause for the respondent's failure to appear under subd. 1. ~~If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding and, if necessary, reinstating the decision which was set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation establishes good cause for nonappearance, the same or another appeal tribunal established by the department for this purpose shall issue a decision containing this finding.~~ The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3) (b) after conducting a hearing concerning any matter in the determination. If such a ~~2nd~~ hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.

108.09 (4) (f) 1. Except as provided in par. (e) 3., within 21 days after its decision was electronically delivered or mailed to the parties, the appeal tribunal may, on its own motion, amend or set aside its decision and may thereafter make new findings and issue a decision on the

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Appeals Modernization

(WITH CHANGES REQUESTED BY UIAC MANAGEMENT MEMBERS)

(Jan. 2016 Version with requested edits made on 1/7/16 1:00pm ver)

basis of evidence previously submitted in such case, or the same or another appeal tribunal may make new findings and issue a decision after taking additional testimony.

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

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

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

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

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 08, 2016 1:17 PM
To: Duchek, Michael
Cc: Crane, Lili B - DWD; Knutson, Janell - DWD
Subject: RE: D15-06

Mike-

My responses below, in red.

Thanks-
Andy

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Friday, January 08, 2016 11:13 AM
To: Rubsam, Andrew J - DWD
Subject: D15-06

Few things so far:

1. I think the striking of the word "to" in green in 108.09 (2) (a) is incorrect because there are two options for delivery: one is to deliver it electronically to the party and the other is to mail it to the last-known address of the party. So you need that word "to." Unless you envision that "last-known address" would include a person's last-known e-mail address, but I don't think the word "address" obviously includes an email address. That's my thinking. Yes, I agree.
2. Section 103.06 uses the same process as for UI, as I believe this provision was drafted at the behest of the UI Division at some point. It therefore should also have the same changes regarding electronic delivery for consistency. OK? I think you're referring to s. 103.06(c) and 103.06(d), correct? If so, please add "electronic delivery" to those subsections. If there are other areas of 103.06, please let me know.
3. I think we previously have talked about s. 108.09 (2) (cm) and that it's no longer relevant. Can we repeal this? Otherwise I'd propose to repeal it in an LRB correction bill. Yes, we want that repealed – it's repealed on the bottom of page 10 of the version of D15-06 that I sent you.
4. Instead of "within 7 days of" it is our practice to say "within 7 days after" to be clear as to whether something includes that first day. OK.
5. There are some places where no change is shown but the text does not match the current statute (i.e., 108.09 (4) (e) 2.). I plan to go with what you have and strike out the current wording where needed. Is it a major difference? This might be possible. There was a lot of cutting, copying and pasting in this version yesterday and in the last month. Please let me know (or keep a list of) the instances where you do this. We'll need to point it out to UIAC I think when we send them the LRB version of this.

Mike Duchek
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 266-0130

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Friday, January 08, 2016 3:11 PM
To: Duchek, Michael
Subject: D15-06

Mike-

No delayed effective/initial app. date is needed.

Please prepare D15-06 as a standalone LRB version without the notes. I'll do a separate memo on the major changes for the UIAC.

Thanks,

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

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

LRB-4395/P1dn
MED:kjf

January 12, 2016

This draft of proposal D15-06 contains various changes that we discussed, including:

1. The addition of language that appeared to be missing in certain places in s. 108.09 (4) (d) and (e), for consistency and parallel structure among the provisions.
2. Changing certain uses of "department" to "appeal tribunal" per our conversation.
3. Changes in phrasing for consistency. I also tried to be more concise when possible. For example, the phrase "explanation for failure to appear at a hearing" was shortened to "explanation" when used subsequently within a paragraph.
4. Correcting usage of the word "which" (nonrestrictive) to "that" (restrictive).
5. Showing the correct deletion of current law.

Michael Duchek
Legislative Attorney
(608) 266-0130
michael.duchek@legis.wisconsin.gov

McKean, Aaron

From: McKean, Aaron
Sent: Thursday, January 14, 2016 1:46 PM
To: Duchek, Michael
Subject: changes to appeals modernization

Hey Mike –

Just FYI: Andy called today with a few changes to the appeals modernization provisions. They are:

1. Remove the changes to 103.06 (6) (c) and (d) – apparently they employers/management want to continue to have tangible mail and not electronic mail. All the other changes re: electronic delivery shall remain as they are in the bill.
2. On 5 – 19 - 23 of the bill, Andy wanted 108.09 (4) (d) 2. To say: “If the appeal tribunal finds that the appellant’s explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding and may dismiss the appeal without a hearing.” We’re essentially just removing the portion that says references acknowledging receipt of the explanation in the decision.
3. On 6 – 18 – 21, the provision will say: “If the appeal tribunal finds that the appellant’s explanation establishes good cause for failing to appear, the appeal tribunal shall issues a decision containing this finding, and the decision may be issued without a hearing. The appeal tribunal shall then set aside the original decision and schedule a hearing concerning any matter in the determination.”
4. On 9 – 16 -23, the provision will say “The appeal tribunal shall then set aside the original decision and schedule a hearing concerning any matter in the determination.” The next sentence is deleted since there will no longer be a situation where the original decision is not set aside after finding good cause for failing to appear.
5. Finally, 10-11, add par. (d) 3 in addition to (e) 3. *talked w/ Mike - remove e3/d3*

The plan is to make these changes today, hopefully have them added to LRB 2020 once they are approved, and then be able to send out LRB 2020 to Andy tomorrow (Friday). That way, Andy can email it to the council tomorrow and they can vote on it on Tuesday.

Cheers—Aaron

Aaron McKean
Legislative Attorney
Wisconsin Legislative Reference Bureau

Duchek, Michael

From: Rubsam, Andrew J - DWD <Andrew.Rubsam@dwd.wisconsin.gov>
Sent: Thursday, January 14, 2016 3:45 PM
To: Duchek, Michael; McKean, Aaron
Subject: RE: Language

Importance: High

Aaron-

Please send me the P2 of this with the change to 4(f)1 that deletes the refs to (e)3 and please cross your fingers that there are no more changes.

THANKS!

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Thursday, January 14, 2016 3:27 PM
To: Rubsam, Andrew J - DWD; McKean, Aaron - LEGIS
Subject: Language

I looked one more time and I do think Andy's changes look good aside from what I said about (4) (f) 1. where where I would simply delete the cross ref to (e) 3. since it is only dealing with the ALJ acting on its own motion. I think then under (f) 1. the ALJ could set aside a decision on its own motion within 21 days of the decision, and it says "its decision" which could refer to the original decision or a subsequent one after the original one was set aside, unless you want to make that more clear.

Sent from Outlook Mobile



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4395/PP
MED&AJM:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

[IN-1-14]
DUR - now
Thurs!

Reger

1 AN ACT *to repeal* 108.09 (2) (cm); *to amend* 103.06 (6) (c), 103.06 (6) (d), 108.09
2 (2) (a), 108.09 (2) (d), 108.09 (2r), 108.09 (4) (c), 108.09 (4) (d) 1. and 2., 108.09
3 (4) (e), 108.09 (4) (f) 1., 108.09 (4) (f) 2. (intro.), 108.09 (4) (f) 3., 108.09 (5) (b),
4 108.09 (5) (d), 108.09 (6) (a), 108.09 (6) (b), 108.09 (6) (c), 108.09 (6) (d), 108.095
5 (2), 108.095 (3), 108.095 (7), 108.10 (1), 108.10 (2) and 108.10 (6); and *to repeal*
6 *and recreate* 108.09 (4) (d) 3. and 108.09 (5) (c) of the statutes; **relating to:**
7 determinations, decisions, and orders under the unemployment insurance law.

Analysis by the Legislative Reference Bureau

Administrative review of UI decisions

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

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

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

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

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

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

1 **SECTION 1.** 103.06 (6) (c) of the statutes is amended to read:

2 103.06 (6) (c) The employer or the department may request a review of an
3 appeal tribunal's decision by petitioning the commission for review of the decision
4 within 21 days after the decision was electronically delivered to the employer or
5 mailed to the employer's last-known address. The commission shall conduct the
6 review in the manner described in s. 108.09 (6). An order to stop work that is in effect
7 under par. (b) 3. shall remain in effect as provided in par. (b) 3. during the pendency
8 of a review under this paragraph. A decision of the commission under this paragraph
9 is final and the provisions of s. 108.10 (6) and (7) shall apply to the decision unless
10 judicial review of the decision is requested under par. (d). A decision of the
11 commission under this paragraph is subject to judicial review only as provided in par.
12 (d) and not as provided in ch. 227.

13 **SECTION 2.** 103.06 (6) (d) of the statutes is amended to read:

14 103.06 (6) (d) The employer or the department may commence an action for the
15 judicial review of a decision of the commission under par. (c) within 30 days after the

1 decision was electronically delivered to the employer or mailed to the employer's
2 last-known address. The scope of judicial review under this paragraph, and the
3 manner of that review insofar as is applicable, shall be the same as that provided in
4 s. 108.09 (7). An order to stop work that is in effect under par. (b) 3. shall remain in
5 effect as provided in par. (b) 3. during the pendency of a review under this paragraph.

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

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

20 **SECTION 4.** 108.09 (2) (cm) of the statutes is repealed.

21 **SECTION 5.** 108.09 (2) (d) of the statutes is amended to read:

22 108.09 (2) (d) A copy of each determination shall be delivered electronically to,
23 or mailed to the last-known address of, each of the parties party, except that a party's
24 copy of any determination may be given to such party instead of being electronically
25 delivered or mailed.

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

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

8 **SECTION 7.** 108.09 (4) (c) of the statutes is amended to read:

9 108.09 (4) (c) *Late appeal.* If a party files an appeal ~~which~~ that is not timely,
10 an appeal tribunal shall review the appellant's written reasons for filing the late
11 appeal. If those reasons, when taken as true and construed most favorably to the
12 appellant, do not constitute a reason beyond the appellant's control, the appeal
13 tribunal may dismiss the appeal without a hearing and issue a decision accordingly.
14 Otherwise, the department may schedule a hearing concerning the question of
15 whether the appeal was filed late for a reason that was beyond the appellant's
16 control. The department may also provisionally schedule a hearing concerning any
17 matter in the determination being appealed. After hearing testimony on the late
18 appeal question, the appeal tribunal shall issue a decision ~~which~~ that makes
19 ultimate findings of fact and conclusions of law concerning whether the appellant's
20 appeal was filed late for a reason that was beyond the appellant's control and ~~which~~
21 that, in accordance with those findings and conclusions, either dismisses the appeal
22 or determines that the appeal was filed late for a reason that was beyond the
23 appellant's control. If the appeal is not dismissed, the same or another appeal
24 tribunal established by the department for this purpose, after conducting a hearing,

1 shall then issue a decision under sub. (3) (b) concerning any matter in the
2 determination.

3 SECTION 8. 108.09 (4) (d) 1. and 2. of the statutes are amended to read:

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

8 2. If the appellant ~~delivers or transmits~~ submits to the appeal tribunal a
9 written explanation for nonappearance to the department which failing to appear at
10 the hearing that is received before a decision under subd. 1. is electronically
11 delivered or mailed, the department may so notify each party and schedule a hearing
12 concerning whether there was good cause for under subd. 1., an appeal tribunal shall
13 review the appellant's nonappearance. The department may also provisionally
14 schedule a hearing concerning any matter in the determination. If, after hearing
15 testimony, explanation. The appeal tribunal shall electronically deliver or mail to
16 the respondent a copy of the appellant's explanation. The respondent may, within
17 7 days after the appeal tribunal electronically delivers or mails the appellant's
18 explanation to the respondent, submit to the appeal tribunal a written response to
19 the appellant's explanation. If the appeal tribunal finds that the appellant's

20 explanation does not establish good cause for nonappearance failing to appear, the

X 21 appeal tribunal ^{NO STRIKE} (shall issue a) may dismiss the appeal without a hearing and ²

X 22 ^{NO STRIKE} acknowledge receipt of the explanation in its decision ^{NO STRIKE} containing this finding and

23 dismissing the appeal. If, after hearing testimony, the appeal tribunal finds that the
24 appellant's explanation establishes good cause for nonappearance failing to appear,
25 the appeal tribunal shall issue a decision containing this finding, and such a decision

1 may be issued without a hearing. The same or another appeal tribunal established
2 by the department for this purpose shall then issue a decision under sub. (3) (b) after
3 conducting a hearing concerning any matter in the determination. If such a hearing
4 is held concerning any matter in the determination, the appeal tribunal shall only
5 consider testimony and other evidence admitted at that hearing in making a
6 decision.

7 SECTION 9. 108.09 (4) (d) 3. of the statutes is repealed and recreated to read:

8 108.09 (4) (d) 3. If the appellant submits to the appeal tribunal a written
9 explanation for failing to appear at the hearing that is received within 21 days after
10 a decision is electronically delivered or mailed under subd. 1., an appeal tribunal
11 shall review the appellant's explanation. The appeal tribunal shall electronically
12 deliver or mail to the respondent a copy of the appellant's explanation. The
13 respondent may, within 7 days after the appeal tribunal electronically delivers or
14 mails the appellant's explanation to the respondent, submit to the appeal tribunal
15 a written response to the appellant's explanation. If the appeal tribunal finds that
16 the appellant's explanation does not establish good cause for failing to appear, the
17 appeal tribunal shall issue a decision containing this finding, and such a decision
18 may be issued without a hearing. If the appeal tribunal finds that the appellant's
19 explanation establishes good cause for failing to appear, the appeal tribunal shall
20 issue a decision containing this finding ~~and may set aside the original decision and~~ ^{and the decision may be issued without a hearing.}
21 schedule a hearing concerning any matter in the determination. The same or
22 another appeal tribunal established by the department for this purpose shall then
23 issue a decision under sub. (3) (b) after conducting a hearing concerning any matter
24 in the determination. If such a hearing is held concerning any matter in the

The appeal tribunal shall then

1 determination, the appeal tribunal shall only consider the testimony and other
2 evidence admitted at that hearing in making a decision.

3 **SECTION 10.** 108.09 (4) (e) of the statutes is amended to read:

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

12 2. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a
13 written explanation for nonappearance to the department which failing to appear at
14 the hearing that is received before a decision favorable to the respondent is
15 electronically delivered or mailed under subd. 1., the appeal tribunal shall
16 acknowledge receipt of the explanation in its decision but shall take no further action
17 concerning the explanation at that time. If the respondent ~~delivers or transmits~~
18 submits to the appeal tribunal a written explanation for ~~nonappearance to the~~
19 ~~department which failing to appear that~~ is received before a decision unfavorable to
20 the respondent is electronically delivered or mailed under subd. 1., the department
21 ~~may so notify each party and may schedule a hearing concerning whether there was~~
22 ~~good cause for the respondent's nonappearance. The department may also~~
23 ~~provisionally schedule a hearing for further testimony concerning any matter in the~~
24 ~~determination. If, after hearing testimony, the appeal tribunal finds that the~~
25 ~~respondent's explanation does not establish good cause for nonappearance, the~~

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

21 3. If the respondent ~~delivers or transmits~~ submits to the appeal tribunal a
22 written explanation for nonappearance to the department ~~which failing to appear at~~
23 the hearing that is received within 21 days after a decision favorable to the
24 respondent is electronically delivered or mailed under subd. 1., the ~~department~~
25 appeal tribunal shall notify the respondent of receipt of the explanation and that

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

1 decision which was set aside. If, after hearing testimony, the appeal tribunal finds
2 that the respondent's explanation establishes good cause for nonappearance, the
3 same or another appeal tribunal established by the department for this purpose shall
4 issue a decision containing this finding. The same or another appeal tribunal
5 established by the department for this purpose shall then issue a decision under sub.
6 (3) (b) after conducting a hearing concerning any matter in the determination. If
7 such a 2nd hearing is held concerning any matter in the determination, the appeal
8 tribunal shall only consider the testimony and other evidence admitted at that
9 hearing in making a decision.

10 SECTION 11. 108.09 (4) (f) 1. of the statutes is amended to read: *within*

strike
11 108.09 (4) (f) 1. ~~Except as provided in par. (e) 3, within 21~~ days after its decision
12 was electronically delivered or mailed to the parties, the appeal tribunal may, on its
13 own motion, amend or set aside its decision and may thereafter make new findings
14 and issue a decision on the basis of evidence previously submitted in such case, or
15 the same or another appeal tribunal may make new findings and issue a decision
16 after taking additional testimony.

17 SECTION 12. 108.09 (4) (f) 2. (intro.) of the statutes is amended to read:

18 108.09 (4) (f) 2. (intro.) Unless a party or the department has filed a timely
19 petition for review of the appeal tribunal decision by the commission, the appeal
20 tribunal may set aside or amend an appeal tribunal decision, or portion thereof, at
21 any time if the appeal tribunal finds that:

22 SECTION 13. 108.09 (4) (f) 3. of the statutes is amended to read:

23 108.09 (4) (f) 3. Unless a party or the department has filed a timely petition for
24 review of the appeal tribunal decision by the commission, the appeal tribunal may,
25 within 2 years after the date of the decision, reopen its decision if it has reason to

1 believe that a party offered false evidence or a witness gave false testimony on an
2 issue material to its decision. Thereafter, and after receiving additional evidence or
3 taking additional testimony, the same or another appeal tribunal may set aside its
4 original decision, make new findings, and issue a decision.

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

6 108.09 (5) (b) All testimony at any hearing under this section shall be ~~taken~~
7 ~~down by a stenographer, or recorded by a recording machine~~ electronic means, but
8 need not be transcribed unless either of the parties requests a transcript ~~prior to~~
9 before expiration of that party's right to further appeal under this section and pays
10 a fee to the commission in advance, the amount of which shall be established by rule
11 of the commission. ~~When the commission provides a transcript is thus furnished to~~
12 one of the parties upon request, the commission shall also provide a copy of the
13 ~~transcript shall be furnished to all other party parties~~ free of charge. The
14 transcript fee ~~thus~~ collected shall be paid to the administrative account.

15 **SECTION 15.** 108.09 (5) (c) of the statutes is repealed and recreated to read:

16 108.09 (5) (c) The department shall furnish a copy of the electronic recording
17 to the parties upon payment of any fee required by the department by rule.

18 **SECTION 16.** 108.09 (5) (d) of the statutes is amended to read:

19 108.09 (5) (d) In its review of the decision of an appeal tribunal, the commission
20 shall use the electronic recording of the hearing or a written synopsis of the
21 ~~testimony and other evidence taken at a hearing or shall use~~ a transcript of the
22 hearing prepared, under the direction of the department or commission, ~~by an~~
23 ~~employee of the department, an employee of the commission or a contractor. If a~~
24 ~~party shows to the commission that a synopsis is not sufficiently complete and~~
25 ~~accurate to fairly reflect the relevant and material testimony and other evidence~~

1 taken, the commission shall direct the preparation of a transcript. If a transcript is
2 prepared, the transcript shall indicate the transcriber's name and whether the
3 transcriber is an employee of the department, an employee of the commission, or a
4 contractor and shall also use any other evidence taken at the hearing.

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

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

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

16 108.09 (6) (b) Within 28 days after a decision of the commission is electronically
17 delivered or mailed to the parties, the commission may, on its own motion, set aside
18 the decision for further consideration and take action under par. (d).

19 **SECTION 19.** 108.09 (6) (c) of the statutes is amended to read:

20 108.09 (6) (c) On its own motion, for reasons it deems sufficient, the commission
21 may set aside any final determination of the department or appeal tribunal or
22 commission decision within 2 years ~~from~~ after the date thereof upon grounds of
23 mistake or newly discovered evidence, and take action under par. (d). The
24 commission may set aside any final determination of the department or any decision
25 of an appeal tribunal or of the commission at any time, and take action under par.

1 (d), if the benefits paid or payable to a claimant have been affected by wages earned
2 by the claimant ~~which~~ that have not been paid, and the commission is provided with
3 notice from the appropriate state or federal court or agency that a wage claim for
4 those wages will not be paid in whole or in part.

5 **SECTION 20.** 108.09 (6) (d) of the statutes is amended to read:

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

11 **SECTION 21.** 108.095 (2) of the statutes is amended to read:

12 108.095 (2) The department shall investigate whether any person has obtained
13 benefits that were payable to another person by means of any false statement or
14 representation, and may issue an initial determination concerning its findings. The
15 department shall electronically deliver a copy of the determination to, or mail a copy
16 of the determination to the last-known address of, each party affected thereby.
17 Unless designated by a determination under this section, an employing unit is not
18 a party to the determination. The department may set aside or amend the
19 determination at any time prior to a hearing concerning the determination under
20 sub. (5) on the basis of subsequent information or to correct a mistake, including an
21 error of law.

22 **SECTION 22.** 108.095 (3) of the statutes is amended to read:

23 108.095 (3) Any party to a determination may appeal that determination by
24 requesting a hearing concerning any matter in that determination if the request is

1 received by the department or postmarked within 14 days after the electronic
2 delivery or mailing.

3 **SECTION 23.** 108.095 (7) of the statutes is amended to read:

4 108.095 (7) Any party may commence an action for judicial review of a decision
5 of the commission under this section, after exhausting the remedies provided under
6 this section, by commencing the action within 30 days after the decision of the
7 commission is delivered electronically or mailed to the department and is delivered
8 electronically to, or mailed to the last-known address of, each other party. The scope
9 and manner of judicial review is the same as that provided in s. 108.09 (7).

10 **SECTION 24.** 108.10 (1) of the statutes is amended to read:

11 108.10 (1) The department shall investigate the status, and the existence and
12 extent of liability of an employing unit, and may issue an initial determination
13 accordingly. The department may set aside or amend the determination at any time
14 prior to a hearing on the determination on the basis of subsequent information or to
15 correct a mistake, including an error of law. The department shall electronically
16 deliver a copy of each determination to, or mail a copy of each determination to the
17 last-known address of, the employing unit affected thereby. The employing unit may
18 request a hearing as to any matter in that determination if the request is received
19 by the department or postmarked within 21 days after the mailing and in accordance
20 with such procedure as the department prescribes by rule.

21 **SECTION 25.** 108.10 (2) of the statutes is amended to read:

22 108.10 (2) Any hearing duly requested shall be held before an appeal tribunal
23 established as provided by s. 108.09 (3), and s. 108.09 (4) and (5) shall be applicable
24 to the proceedings before such tribunal. The department may be a party in any
25 proceedings before an appeal tribunal. The employing unit or the department may

1 petition the commission for review of the appeal tribunal's decision under s. 108.09
2 (6).

3 **SECTION 26.** 108.10 (6) of the statutes is amended to read:

4 108.10 (6) Any determination by the department or any decision by an appeal
5 tribunal or by the commission is conclusive with respect to an employing unit unless
6 ~~it the department or the employing unit~~ files a timely request for a hearing or petition
7 for review as provided in this section. A determination or decision is binding upon
8 the department only insofar as the relevant facts were included in the record ~~which~~
9 that was before the department at the time the determination was issued, or before
10 the appeal tribunal or commission at the time the decision was issued.

11

(END)



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-4395/P2
MED&AJM:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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

Analysis by the Legislative Reference Bureau

Administrative review of UI decisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13

(END)