



State of Wisconsin  
2019-2020 LEGISLATURE

**CORRECTIONS IN:**

**2019 ASSEMBLY BILL 1038**

Prepared by the Legislative Reference Bureau  
(April 15, 2020)

In enrolling, the following correction was made:

1. Page 47, line 13: delete “Public” and substitute “In this section, “public”.

(END)

LRB-6089/1ccc-1  
KLM

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Minor clerical corrections in legislation are authorized under s. 35.17, stats.; Senate Rule 31; Assembly Rule 36; and Joint Rule 56.



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-6089/1  
ALL:all

## 2019 ASSEMBLY BILL 1038

April 13, 2020 - Introduced by COMMITTEE ON ASSEMBLY ORGANIZATION,  
Representatives VOS and STEINEKE, cosponsored by Senator FITZGERALD.

1     **AN ACT** *to renumber* 60.11 (2) (b) and 108.07 (5); *to renumber and amend*  
2         49.688 (1) (c), 70.47 (3) (aL), 108.04 (3), 108.062 (4) and 108.062 (19); *to amend*  
3         13.101 (4), 20.866 (2) (xm), 40.22 (1), 40.22 (2m) (intro.), 40.22 (2r) (intro.), 40.22  
4         (3) (intro.), 40.26 (1m) (a), 40.26 (1m) (b), 40.26 (5) (intro.), 40.51 (8), 40.51 (8m),  
5         66.0137 (4), 71.01 (6) (L) 3., 71.22 (4) (L) 3., 71.22 (4m) (L) 3., 71.26 (2) (b) 12.  
6         d., 71.34 (1g) (L) 3., 71.42 (2) (L) 3., 71.98 (3), 74.35 (5) (c), 74.37 (4) (b), 108.04  
7         (13) (d) 3. b., 108.04 (13) (d) 4. b., 108.062 (1) (b), 108.062 (3), 108.062 (15),  
8         108.14 (8n) (e), 108.141 (7) (a), 108.16 (6m) (a), 115.385 (1) (intro.), 115.415 (1)  
9         (b), 115.999 (1) (d) 1., 115.999 (2m) (b) 1. a., 118.38 (2) (am) (intro.), 118.38 (3),  
10         118.60 (7) (an) 1., 119.23 (7) (an) 1., 119.33 (2) (b) 3. b., 119.33 (2) (b) 3. c., 119.33  
11         (5) (b) 2., 119.9002 (2) (d) 2. a., 119.9002 (2) (d) 2. b., 119.9002 (2) (d) 3. a.,  
12         119.9002 (2) (d) 3. b., 119.9004 (3) (b) 2., 120.13 (2) (g), 146.40 (3), 185.983 (1)  
13         (intro.), 450.11 (5) (a), 609.83, 625.12 (2), 628.34 (3) (a) and 895.51 (title); and  
14         **to create** 13.101 (4d), 40.26 (5m), 40.26 (6), 49.688 (1) (c) 2., 49.688 (10m), 60.11

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1 (2) (b) 2., 70.47 (3) (aL) 2., 100.307, 102.03 (6), 102.565 (6), 103.13 (2m), 108.04  
2 (2) (d), 108.04 (3) (b), 108.062 (2m), 108.062 (3r), 108.062 (4) (a) 2., 108.062 (19)  
3 (a) and (b), 108.062 (20), 108.07 (5) (bm), 115.385 (6), 115.7915 (8m), 118.38 (4),  
4 118.60 (12), 119.23 (12), 153.23, 323.19 (3), 323.19 (4), 323.265, 323.2911,  
5 323.2912, 323.2913, 323.2915, 440.08 (5), 450.11 (5) (br), 609.205, 609.846,  
6 609.885, 632.729, 632.895 (14g), 632.895 (16v), 895.4801, 895.51 (1) (bd),  
7 895.51 (1) (bg), 895.51 (1) (dp), 895.51 (2r) and 895.51 (3r) of the statutes;  
8 **relating to:** state government response to the COVID-19 pandemic.

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***Analysis by the Legislative Reference Bureau*****1.****AGRICULTURE*****Eligibility for local fair aids***

This bill modifies the eligibility requirements for agricultural societies, boards, and associations to receive local fair aid provided by the Department of Agriculture, Trade and Consumer Protection. To remain eligible for local fair aid from DATCP, current law requires local agricultural societies, boards, and associations to operate a fair each year. The bill allows agricultural societies, boards, and associations to remain eligible for local fair aid if a local fair is not held during 2020 because of the public health emergency declared on March 12, 2020, by executive order 72.

***Prohibiting retailers from accepting certain returns***

This bill prohibits a retailer from accepting a return of food products, personal care products, cleaning products, and paper products during the public health emergency declared on March 12, 2020, by executive order 72, or during the 30 days immediately after the end of that public health emergency. The bill contains exceptions, allowing retailers to accept returns of food, personal care, cleaning, or paper products made within seven days of purchase and returns of adulterated or defective food, personal care, cleaning, or paper products. Under the bill, retailers may accept returns of other types of products.

**2.****CAMPAIGN FINANCE*****Communications relating to public health emergency***

Currently, under Wisconsin's campaign finance law, a person elected to a state or local government elective office who becomes a candidate for a national, state, or local government office may not use public funds to pay the cost of materials or distribution for 50 or more pieces of substantially identical material during the

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campaign season. This bill exempts from this prohibition communications during the public health emergency declared on March 12, 2020, by executive order 72, that relate to the public health emergency.

**3.****CORRECTIONAL SYSTEM*****Death of an inmate***

Under current law, if an individual dies while he or she is in the legal custody of the Department of Corrections and confined to a correctional facility located in this state, an autopsy on the deceased individual must be performed. Under this bill, for the duration of the public health emergency relating to COVID-19, if an individual who has been diagnosed with COVID-19 dies, the coroner or medical examiner may perform limited examination of the deceased individual instead of a full autopsy, which may include an external examination of the body of the deceased individual, a review of the deceased individual's medical records, or a review of the deceased individual's radiographs.

**4.****COURTS AND PROCEDURE*****Liability exemption for persons who manufacture, distribute, or sell emergency medical supplies***

This bill establishes a civil liability exemption for persons who manufacture, distribute, or sell emergency medical supplies to respond to the public health emergency during the public health emergency related to COVID-19 declared by the federal secretary of health and human services or the national emergency related to COVID-19 declared by the president. The bill defines "emergency medical supplies" to mean any medical equipment or supplies necessary to limit the spread of, or provide treatment for, a disease associated with the public health emergency related to the COVID-19 pandemic, including life support devices, personal protective equipment, cleaning supplies, and any other items determined to be necessary by the secretary of health services. Under the bill, any person engaged in the manufacturing, distribution, or sale of emergency medical supplies who donates or sells, for a price not to exceed a certain amount established in the bill, the emergency medical supplies to a charitable organization or governmental unit to respond to the public health emergency related to COVID-19 is immune from civil liability for the death of or injury to an individual caused by emergency medical supplies donated or sold.

The bill also provides that any charitable organization that distributes free of charge emergency medical supplies received from a manufacturer, distributor, or seller is immune from civil liability for a death or injury caused by the emergency medical supplies.

**5.**

**ASSEMBLY BILL 1038****ECONOMIC DEVELOPMENT*****Plan to provide support to major industries***

This bill requires the Wisconsin Economic Development Corporation to submit a report to the legislature and the governor by June 30, 2020, that includes a plan for providing support to the major industries in Wisconsin that have been adversely affected by the COVID-19 public health emergency, including tourism, manufacturing, agriculture, construction, retail, and services.

**6.****EDUCATION*****Pupil examinations; public health emergency exception for the 2019-20 school year***

Under current law, school boards, independent charter schools, private schools participating in the Milwaukee Parental Choice Program, Racine Parental Choice Program or Wisconsin Parental Choice Program and, under some circumstances, a private school participating in the Special Needs Scholarship Program are required to annually administer examinations adopted by the state superintendent of public instruction to pupils in the fourth, eighth, ninth, tenth, and eleventh grades. These examinations are commonly referred to as the Wisconsin Student Assessment System, which include The Forward Exam, ACT ASPIRE, the ACT, and Dynamic Learning Maps. Under the bill, the requirements to administer the WSAS do not apply in the 2019-20 school year.

Current law also requires school boards, independent charter schools, and private schools participating in a parental choice program to annually administer a standardized reading test developed by the Department of Public Instruction to third grade pupils. Under the bill, requirements to administer the third grade standardized reading test do not apply in the 2019-20 school year.

Under current law, school boards and independent charter schools are required to evaluate teachers and principals using an educator effectiveness evaluation system that considers pupil performance on statewide assessments. Under the bill, school boards and independent charter schools are prohibited from considering pupil performance on statewide assessments in evaluating teachers and principals in the 2019-20 school year.

***School and school district accountability report for the 2019-20 school year***

The bill prohibits DPI from publishing a school and school district accountability report in the 2020-21 school year.

Under current law, DPI is required to publish a school and school district accountability report each year by November 30. To measure school performance and school district improvement, particularly measures related to pupil achievement in reading and math, DPI uses data derived from pupil performance on statewide assessments administered in the prior school year. The bill also changes references to accountability reports published in a specific school year or years to the most recently published accountability report or reports to account for the fact that, under the bill, DPI will not publish an accountability report in the 2020-21 school year.

**ASSEMBLY BILL 1038*****Waiver of laws and rules related to parental choice programs, the Special Needs Scholarship Program, and independent charter schools; schools closed by the Department of Health Services or a local health officer***

Under the bill, during the public health emergency declared on March 12, 2020, by executive order 72, if the Department of Health Services or a local health officer closes schools for ten or more school days during a school year, DPI may waive state education statutes, or rules promulgated under those statutes, related to 1) a parental choice program or the SNSP, 2) private schools participating in a parental choice program or the SNSP, or 3) independent charter schools. Under the bill, DPI may also establish alternate deadlines for requirements in education laws or rules if the original deadline occurs between the date the schools are closed and 120 days after the day schools are reopened or the original deadline relates to another event that occurs during that same period.

Under current law, upon request from a school board and a public hearing, DPI may waive school district and school board requirements in a state education statute or rule. However, under current law, a school board may not request, and DPI may not grant, a waiver from state education statutes and rules related to certain topics, including the health or safety of pupils, confidentiality of pupil records, and pupil assessments.

***Exceptions in parental choice programs and the Special Needs Scholarship Program; schools closed by the Department of Health Services or a local health officer***

Current law allows DPI to bar a private school from participating in a parental choice program or the SNSP in the current school year if the private school fails to comply with specified program requirements. For certain program violations, current law allows DPI to bar a private school from participating in the following school year. Current law also allows DPI to withhold program payments if a participating private school fails to comply with program requirements.

Under the bill, during the public health emergency declared on March 12, 2020, by executive order 72, if a participating private school is closed by DHS or a local health officer for ten or more school days during a school year, DPI may not withhold program payments or bar the private school from participating in the parental choice program or the SNSP in the current or following school year if the private school demonstrates to DPI that the failure to comply with the program requirement was due to the school closure.

Under current law, a private school participating in a parental choice program must maintain a cash and investment balance that is at least equal to its reserve balance. Under the bill, during the public health emergency declared on March 12, 2020, by executive order 72, this requirement does not apply in a school year during which the private school is closed by DHS or a local health officer for ten or more school days.

***Private schools; waiver for hours of instruction in the 2019-20 school year***

Under the bill, in the 2019-20 school year, upon request from a private school, DPI may waive any requirement related to a private school providing hours of instruction.

**ASSEMBLY BILL 1038*****Wisconsin Parental Choice Program; application deadlines for the 2020-21 school year***

The bill extends two deadlines related to pupil applications to attend a private school in the Wisconsin Parental Choice Program in the 2020-21 school year. First, under the bill, a private school participating in the WPCP may accept WPCP applications for the 2020-21 school year from pupils until May 14, 2020, rather than April 16, 2020, under current law. Second, under the bill, private schools participating in the WPCP have until May 29, 2020, to submit information to DPI about the number of WPCP applications the private school received from pupils for the 2020-21 school year. Under current law, private schools participating in the WPCP are required to submit this information to DPI by May 1, 2020.

***Full-time open enrollment program; application deadlines for the 2020-21 school year***

Under current law, a pupil may attend a public school in a school district other than the pupil's resident school district under the full-time open enrollment program (OEP). Current law specifies specific dates by which various steps must occur in the OEP application process. For example, under current law, the last day to submit an application to attend a nonresident school district under the OEP in the 2020-21 school year is April 30, 2020.

This bill extends statutory deadlines related to applications to attend a nonresident school district under the OEP by approximately 30 days. For example, under the bill, the last day to submit an application to attend a nonresident school district under the OEP in the 2020-21 school year is May 29, 2020.

***Reports on virtual instruction and other operations during the public health emergency***

Under the bill, by November 1, 2020, each school board must submit a report to DPI that contains various information about school district operations during the public health emergency, including whether the virtual instruction was implemented in the school district, the number of staff who were laid off, the number of lunches provided, and the amount of certain expenditure reductions. The report must also include any challenges or barriers the school board faced in implementing virtual instruction and the school board's recommendations for best practices related to providing virtual instruction when schools are closed. Under the bill, DPI must compile and report the information it receives from school boards to the legislature by January 1, 2021. The bill defines the "public health emergency" as the period during the 2019-20 school year when schools were closed by DHS. Finally, by June 30, 2020, the bill requires DPI to post on its Internet site guidance on best practices for schools returning to in-person instruction.

**7.****EMERGENCY MANAGEMENT*****Transfer of employees between executive branch agencies***

This bill authorizes the secretary of administration to transfer employees from any executive branch agency to another executive branch agency during the public health emergency declared on March 12, 2020, by executive order 72. Under the bill,

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the agency to which an employee is transferred shall pay all salary and fringe benefit costs of that employee.

***Waiving in-person requirements***

This bill allows a state entity to waive any requirement that an individual appear in person during the public health emergency declared on March 12, 2020, by executive order 72, if the waiver assists in the state's response to the state of emergency or if the requirement may increase the public health risk.

**8.****EMPLOYMENT****UNEMPLOYMENT INSURANCE*****Unemployment insurance; waiting period***

Currently, a claimant must wait one week after becoming eligible to receive unemployment insurance benefits before the claimant may receive benefits for a week of unemployment. The waiting period does not affect the maximum number of weeks of a claimant's benefit eligibility.

This bill suspends the application of the one-week waiting period for benefit years that began after March 12, 2020, and before February 7, 2021. The bill requires the Department of Workforce Development to seek the maximum amount of federal reimbursement for benefits that are, during this time period, payable for the first week of a claimant's benefit year as a result of the suspension.

***Unemployment insurance; benefit charging***

This bill requires DWD, when processing claims for UI benefits and evaluating work-share plans, to determine whether a claim or plan is related to the public health emergency declared by the governor under executive order 72. If a claim is so related, the bill provides that the regular benefits for that claim for weeks occurring after March 12, 2020, and before December 31, 2020, not be charged as is normally provided. Instead, the benefits for those weeks are, subject to numerous exceptions, to be charged to the balancing account of the unemployment reserve fund (pooled account financed by all employers who pay contributions that is used to pay benefits that are not chargeable to any employer's account) or, in the case of employers that do not pay contributions (taxes) but instead reimburse DWD for benefits directly (reimbursable employers), the benefits are to be paid in the manner specified under current law for certain other circumstances involving benefits chargeable to reimbursable employers.

The bill also requires the secretary of workforce development, to the extent permitted under federal law, to seek advances to the state's unemployment reserve fund from the federal government, so as to allow Schedule D of the unemployment insurance contribution (tax) rates to remain in effect through the end of calendar year 2021. Schedule D includes the lowest unemployment insurance contribution rates specified under current law, and is in effect for any calendar year whenever, as of the preceding June 30, the state's unemployment reserve fund has a cash balance of at least \$1,200,000,000.



**ASSEMBLY BILL 1038*****Unemployment insurance; work-share programs***

Current law allows an employer to create a work-share program within a work unit of the employer. Under a work-share program, the working hours of all of the full-time employees in the program are reduced in an equitable manner in lieu of a layoff of some of the employees and a continuation of full-time employment by the other employees. A claimant for UI benefits who is included in a work-share program may receive UI benefits during his or her continued employment with the work-share employer in an amount equal to the claimant's benefit for total unemployment multiplied by the same percentage reduction in normal working hours that the claimant incurs under the program.

This bill suspends all of the following for work-share plans submitted until December 31, 2020:

1. The requirement that a work-share plan be limited to a particular work unit of the employer. The bill instead, during the suspension period, allows a work-share plan to cover any employees of the employer.

2. The requirement that the reduction in working hours under a work-share program must be at least 10 percent but not more than 50 percent of the normal hours per week of the employees included under the plan. The bill instead, during the suspension period, increases the permissible reduction in working hours under a work-share program to be not more than 60 percent of the normal hours per week of the employees included under the plan or the highest permissible reduction allowed under federal law, whichever is greater.

3. The requirements that at least 10 percent of the employees in a work unit be included in a work-share plan and that the employer provide for initial coverage under the plan of at least 20 positions that are filled on the effective date of the work-share program. The bill instead, during the suspension period, requires only that the work-share plan cover at least two positions that are filled on the effective date of the work-share program.

4. The requirement that reduced working hours be apportioned equitably among employees in the work-share program.

The bill also provides that, during the period specified above, a work-share program becomes effective on the later of the Sunday of or after approval of the work-share plan, instead of the second Sunday after approval of the plan, unless a later Sunday is specified.

The bill, however, allows the secretary to waive the application of the changes described above if doing so is necessary to comply with federal requirements or for this state to qualify for full federal financial participation in the cost of administration of the work-share program and financing of work-share benefits.

The bill also requires DWD to allow employers to submit work-share plan applications using an online form and to provide assistance to employers with submitting applications and developing work-share plans.

The bill also specifies that a work-share program shall be governed by the law that was in effect when the plan was approved, until the program ends as provided under current law.

**ASSEMBLY BILL 1038****WORKER'S COMPENSATION*****Rebuttable presumption that injury caused to first responders during current public health emergency is caused by employment***

This bill provides that, for the purposes of worker's compensation, an injury caused to a first responder, during any public health emergency declared by the governor on March 12, 2020, by executive order 72 and ending 30 days after the termination of the order, is presumed to be caused by the individual's employment. The presumption requires a diagnosis or positive test for COVID-19, and may be rebutted by specific evidence that the injury was caused outside of employment.

**OTHER EMPLOYMENT*****Employee records during public health emergency***

Under the bill, the requirements that an employer provide an employee's personnel record within seven working days after receiving the request, that the inspection be at a location near the employee's place of employment, and that the inspection be during normal working hours are suspended during the public health emergency declared on March 12, 2020, by executive order 72.

***Suspension of certain time limits and in-person meetings for grievance process during public health emergency***

Under the bill, a state employee does not waive his or her right to appeal an adverse employment decision if the employee does not timely file the complaint or appeal during the public health emergency declared on March 12, 2020, by executive order 72. Under current law, an employee waives such right if the employee does not timely file.

Under the bill, an appointing authority is not required to hold an in-person meeting with a state employee who has filed an employment grievance during the public health emergency declared on March 12, 2020, by executive order 72.

***Use of annual leave during public health emergency***

Under the bill, a state employee may take annual leave during the public health emergency declared on March 12, 2020, by executive order 72, even if the employee has not completed the first six months of the employee's probationary period. If the employee terminates employment before earning any leave the employee used, the employer may deduct the amount of unearned leave from the employee's final pay. Under current law, an employee may not take annual leave during the first six months of the employee's probationary period.

***Limited term employees during public health emergency***

Under the bill, the director of the Bureau of Merit Recruitment and Selection in the Division of Personnel Management in the Department of Administration may adjust the number of hours a state employee in a limited term appointment may work during the public health emergency declared on March 12, 2020, by executive order 72. Under current law, a limited term appointment may not exceed 1,040 hours per year.

**ASSEMBLY BILL 1038****HEALTH AND HUMAN SERVICES*****Enhanced federal medical assistance percentage***

This bill allows DHS to suspend compliance with current premium and health risk assessment requirements for childless adults, delay implementation of the community engagement requirement for childless adults, and maintain continuous enrollment under the Medical Assistance program in compliance with federal law in order to satisfy criteria for an enhanced federal medical assistance percentage, or FMAP, under the Medical Assistance program during the period to which the enhanced federal medical assistance percentage applies. The FMAP is the percentage of Medicaid-related costs that the federal government provides a state after a state has paid for its share of the costs.

***Prescription order extensions***

Current law allows a pharmacist to extend a prescription order under certain circumstances in the event that the prescription cannot otherwise be refilled, subject to certain criteria and limitations.

This bill creates an alternative authorization for a pharmacist to extend a prescription during the period covered by a public health emergency declared on March 12, 2020, by executive order 72, and for 30 days after the conclusion of that public health emergency. Under the bill, during that period, the prescribing practitioner is exempt from having to contact the prescribing practitioner or his or her office, and certain other requirements also do not apply. However, the pharmacist may not extend a prescription if the prescribing practitioner has indicated that no extensions are permitted. The pharmacist may extend the prescription by up to a 30-day supply, except that if the drug is typically packaged in a form that requires a pharmacist to dispense the drug in a quantity greater than a 30-day supply, the pharmacist may extend the prescription order as necessary to dispense the drug in the smallest quantity in which it is typically packaged. The bill allows only one extension of a prescription by a pharmacist during a public health emergency period.

***Hours of instructional program for nurse aides***

This bill conforms state law for instructional programs for nurse aides to the federal law requirements for Medicare and Medicaid. Specifically, the bill prohibits DHS from requiring an instructional program to exceed the federally required minimum total training hours or minimum hours of supervised practical training, which is clinical experience, specified in the federal regulation. The current federal regulation requires no less than 75 hours of training with at least 16 of those hours being supervised practical training.

***Collection and reporting of public health emergency data***

This bill requires the entity that is under contract under current law to collect, analyze, and disseminate the health care information of hospitals and ambulatory surgery centers to prepare and publish a public health emergency dashboard during the state of emergency related to COVID-19 declared by the governor or a federally declared emergency, disaster, or public health emergency that involves Wisconsin. The public health emergency dashboard uses health care emergency preparedness

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information collected by the state from acute care hospitals and must include information to assist emergency response planning activities. The entity and DHS must enter into a data use agreement and mutually agree to certain items specified in the bill.

***Health information exchange pay-for-performance system***

DHS shall develop for the Medical Assistance program a payment system based on performance to incentivize participation in the health information exchange as specified in the bill.

***Legislative oversight during COVID-19 public health emergency***

This bill makes inapplicable during the public health emergency declared by the federal secretary of health and human services in response to the 2019 novel coronavirus certain legislative oversight procedures for requests for waivers, amendments to a waiver, or other federal approval but only if the request is for something specifically authorized in the bill. The legislative oversight procedures that would be inapplicable are the procedures under which the Department of Health Services must submit such a request if it has been directed by legislation. Any extension or renewal of the items specified in the bill must comply with legislative oversight requirements in current law as the bill specifies that DHS may implement the items specified in the bill only on a temporary basis to address the 2019 novel coronavirus pandemic for which the public health emergency was declared by the federal secretary.

***Coverage of vaccinations under SeniorCare***

This bill requires the Department of Health Services to include coverage of vaccinations through the SeniorCare program. Under current law, DHS administers the SeniorCare program, which provides assistance to the elderly in the purchase of prescription drugs. The program is operated under a waiver of federal Medicaid laws, but DHS is required to implement the program regardless of whether the waiver is received from the federal Department of Health and Human Services. This bill incorporates coverage through the SeniorCare program of those vaccinations recommended for administration to adults by the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices and approved by DHS. The bill requires DHS to provide payments to health care providers that administer the vaccinations and submit claims for payment in the manner required. Under the bill, DHS may provide payment for a vaccination only after deducting the amount of any payment for the vaccination available from other sources.

***Immunity from civil liability for health care providers during COVID-19 emergency***

This bill provides immunity from civil liability for health care professionals and providers and employees, agents, or contractors of those professionals or providers for death, injury, or damages caused by actions or omissions taken in providing services to address or in response to a 2019 novel coronavirus outbreak during an emergency or disaster declared relating to the 2019 novel coronavirus pandemic. To be immune from civil liability, the actions or omissions must not involve reckless or wanton conduct or intentional misconduct and must occur during a good faith

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response to the emergency or be substantially consistent with either a direction, guidance, recommendation, or other statement made by a federal, state, or local official to address or in response to the emergency or disaster or any published guidance of DHS or the federal Department of Health and Human Services relied upon in good faith.

***Cremation permits and electronic signature of death certificates***

Under current law, a coroner or medical examiner must view the corpse of a deceased person before issuing a cremation permit, and the corpse may not be cremated within 48 hours after the death unless the death was caused by a contagious or infectious disease. Under this bill, for the duration of the public health emergency declared on March 12, 2020, by executive order 72, if a physician, coroner, or medical examiner has signed the death certificate of a deceased person and listed COVID-19 as the cause of death, a coroner or medical examiner must issue a cremation permit without viewing the corpse of a deceased person and a coroner or medical examiner must issue the permit within 48 hours after the time of death. The bill also requires that if the underlying cause of a death is determined to be COVID-19, the person required to sign the death certificate shall provide an electronic signature on the death certificate within 48 hours after the death occurs.

***Renewals of credentials for emergency medical services providers***

This bill prohibits DHS from requiring an ambulance service provider, emergency medical services practitioner, or emergency medical responder that holds a credential to renew the credential or to meet renewal requirements during the public health emergency declared on March 12, 2020, by executive order 72. Under the bill, a renewal that occurs after the emergency period is not considered a late renewal if the application to renew the credential is received before the next applicable renewal date, and DHS may, for that next applicable renewal date, provide an exemption from or reduction of continuing education or other conditions for renewal. Current law requires licenses for ambulance service providers and emergency medical services practitioners and certificates for emergency medical responders to be renewed every three years. Currently, emergency medical services practitioners must complete training, education, or examination requirements set by DHS to renew their licenses. Current law requires ambulance service providers must provide a financial report and a certification by each governmental unit in the service or contract area for license renewal. Currently, emergency medical responders must take a refresher course to renew their certificates.

***Child Care and Development Fund block grant funding***

Under this bill, federal Child Care and Development Fund block grant funds received by the state under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 are credited to federal block grant appropriations and the purposes for the expenditure of those funds are subject to passive review by the Joint Committee on Finance.

**ASSEMBLY BILL 1038****HOUSING*****Deadline for applying for heating assistance***

Under current law, a household may apply for heating assistance under DOA's low-income energy assistance program after September 30 and before May 16 of any year. Under this bill, applications may be submitted at any time in calendar year 2020.

**11.****INSURANCE*****Payments for services by out-of-network providers***

During the public health emergency declared by the governor or by the secretary of the federal Department of Health and Human Services in response to the COVID-19 pandemic, the bill prohibits a defined network plan, including a health maintenance organization, or preferred provider plan from requiring an enrollee of the plan to pay more for a service, treatment, or supply provided by an out-of-network provider than if the service, treatment, or supply is provided by a provider that is participating in the plan's network. This prohibition applies to any service, treatment, or supply that is related to diagnosis or treatment for COVID-19 and any service, treatment, or supply that is provided by a provider that is not a participating provider because a participating provider is unavailable due to the public health emergency. For a service, treatment, or supply provided under those circumstances, the bill requires the plan to reimburse the out-of-network provider at 225 percent of the federal Medicare program rate. Also under those circumstances, any health care provider or facility that provides a service, treatment, or supply to an enrollee of a plan but is not a participating provider of that plan shall accept as payment in full any payment by a plan that is at least 225 percent of the federal Medicare program rate and may not charge the enrollee an amount that exceeds the amount the provider or facility is reimbursed by the plan.

***Prohibiting coverage discrimination based on COVID-19 diagnosis***

This bill prohibits insurers that offer an individual or group health benefit plan, pharmacy benefit managers, or self-insured governmental health plans from doing any of the following based on a current or past diagnosis or suspected diagnosis of COVID-19: establishing rules for the eligibility of any individual, employer, or group to enroll or remain enrolled in a plan or for the renewal of coverage under the plan; cancelling coverage during a contract term; setting rates for coverage; or refusing to grant a grace period for payment of a premium that would generally be granted.

***Prohibiting certain prescription drugs coverage limits***

The bill prohibits insurers that offer health insurance, self-insured governmental health plans, and pharmacy benefit managers from requiring prior authorization for early refills of a prescription drug or otherwise restricting the period of time in which a prescription drug may be refilled and from imposing a limit on the quantity of prescription drugs that may be obtained if the quantity is no more than a 90-day supply. These prohibitions do not apply if the prescription drug is a controlled substance.

**ASSEMBLY BILL 1038*****Liability insurance for physicians and nurse anesthetists***

This bill specifies that, during the public health emergency declared on March 12, 2020, by executive order 72, a physician or nurse anesthetist for whom Wisconsin is not a principal place of practice but who is temporarily authorized to practice in Wisconsin may fulfill financial responsibility requirements by filing with the commissioner of insurance a certificate of insurance for a policy of health care liability insurance issued by an insurer authorized in a certain jurisdiction specified in the bill and may elect to be covered by Wisconsin's health care liability laws.

***Coverage of COVID-19 testing without cost sharing***

The bill requires every health insurance policy and every self-insured governmental health plan that generally covers testing for infectious disease to provide coverage of testing for COVID-19 without imposing any copayment or coinsurance before March 13, 2021. A health insurance policy is referred to in the bill as a disability insurance policy.

**12.****LEGISLATURE*****Transfer of moneys from sum sufficient appropriations***

The Joint Committee on Finance may currently transfer moneys between sum certain and continuing appropriations if JCF finds that unnecessary duplication of functions can be eliminated, more efficient and effective methods for performing programs will result, or legislative intent will be more effectively carried out because of the transfer.

This bill authorizes JCF to transfer moneys from sum sufficient appropriations during the public health emergency declared on March 12, 2020, by executive order 72 and for 90 days after the end of the emergency. The total amount that may be transferred from all sum sufficient appropriations during the emergency may not exceed \$75,000,000.

***Audit of programs and expenditures under this act***

Under this bill, beginning on July 1, 2020, and ending on June 30, 2021, the Legislative Audit Bureau must review programs affected by this act and expenditures authorized under this act and must report the results of its reviews at least quarterly to the legislature and to the Joint Legislative Audit Committee.

**13.****LOCAL GOVERNMENT*****Board of review meeting***

Under current law, a town, city, or village annually convenes a meeting of the board of review to hear objections to local assessments. The board must meet during the 45-day period beginning on the fourth Monday in April, but no sooner than seven days after the last day on which the property tax assessment roll is open for public examination. If the assessment roll is not complete in time for the board's first meeting, the board meets, but adjourns until the roll is complete. Under the bill, regardless of whether the 2020 assessment roll is complete at the time of the 45-day

**ASSEMBLY BILL 1038**

period beginning on the 4th Monday of April, the board may publish a notice that the board has adjourned and will proceed as provided under current law.

***Annual town meeting***

Under current law, a town is required to hold an annual town meeting. The town meeting must be held on the third Tuesday of April, except that the town may set another date within ten days after the third Tuesday of April. This bill allows a town board or, if the town board is unable to promptly meet, the town chair to postpone the town meeting so that it does not occur during the period beginning on the first day of the public health emergency declared by the governor by executive order 72 and ending 60 days after the termination of that order.

**14.****OCCUPATIONAL REGULATION*****Health care provider credential renewals***

This bill exempts certain health care provider credentials issued by credentialing boards in the Department of Safety and Professional Services from having to be renewed during the period covered by the public health emergency declared on March 12, 2020, by executive order 72, through the 60th day after the conclusion of that emergency (exemption period).

For the next applicable renewal period after the exemption period, the credential holder is not subject to any late renewal fee, and the applicable credentialing board may provide an exemption from or reduction of continuing education or other renewal requirements.

***Temporary credentials for former health care providers***

This bill authorizes former health care providers to obtain a temporary credential granted by DSPS and provide health care services for which they have been previously licensed or certified. Under the bill, DSPS may grant a temporary credential to a person who applies and was at any time during the previous five years, but is not currently, any of the following, if the person's credential was never revoked, limited, suspended, or denied renewal: 1) a physician, physician assistant, or perfusionist; 2) a registered nurse, licensed practical nurse, or nurse-midwife; 3) a dentist; 4) a pharmacist; 5) a psychologist; 6) a social worker; 7) a marriage and family therapist; 8) a professional counselor; 9) a clinical substance abuse counselor; or 10) a practitioner holding a credential to practice a profession identified by DHS. A temporary credential granted under the bill expires 90 days after the conclusion of the public health emergency declared on March 12, 2020, by executive order 72.

Current law generally prohibits a person from engaging in certain health care-related practices without holding a required credential.

The bill also authorizes DSPS, during the public health emergency, to waive fees for applications for an initial credential and renewal of a credential for physicians, physician assistants, nurses, dentists, pharmacists, psychologists, and certain behavioral health providers.

***Temporary credentials for health care providers from other states***

This bill authorizes health care providers licensed in another state or territory to obtain a temporary credential granted by DSPS and provide health care services



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for which they are licensed or certified. Under the bill, DSPS may grant a temporary credential to a person who applies and holds a valid, unexpired credential granted by another state or territory that authorizes the person to act as any of the following: 1) a physician, physician assistant, or perfusionist; 2) a registered nurse, licensed practical nurse, or nurse-midwife; 3) a dentist; 4) a pharmacist; 5) a psychologist; 6) a social worker; 7) a marriage and family therapist; 8) a professional counselor; 9) a clinical substance abuse counselor; or 10) a practitioner holding a credential to practice a profession identified by DHS. A temporary credential granted under the bill expires 90 days after the conclusion of the public health emergency declared on March 12, 2020, by executive order 72.

Current law generally prohibits a person from engaging in certain health-care related practices without holding a required credential.

The bill also authorizes DSPS, during the public health emergency, to waive fees for applications for an initial credential and renewal of a credential for physicians, physician assistants, nurses, dentists, pharmacists, psychologists, and certain behavioral health providers.

**15.****PUBLIC UTILITIES*****Loans to municipal utilities for the purpose of maintaining liquidity***

Under current law, the Board of Commissioners of Public Lands manages the common school fund, the normal school fund, the university fund, and the agricultural college fund (trust funds). Current law authorizes the BCPL to manage and invest moneys belonging to the trust funds in good faith and with the care an ordinary prudent person in a like position would exercise under similar circumstances.

On March, 11, 2020, the governor issued emergency order 11 in connection with the COVID-19 public health emergency. EO 11 suspended certain rules of the Public Service Commission to ensure that customers of public utilities do not experience a loss of service during the public health emergency. EO 11 also required that deferred payment agreements be made available not only to residential customers but also commercial, farm, and industrial customers of public utilities.

This bill authorizes the BCPL to loan moneys belonging to the trust funds to municipal utilities to ensure that municipal utilities are able to maintain liquidity during the COVID-19 public health emergency. A municipal utility is a public utility that is a city, village, or town, or that is wholly owned or operated by a city, village, or town.

**16.****RETIREMENT AND GROUP INSURANCE*****WRS annuities for certain annuitants returning to work during public health emergency***

This bill allows an annuitant who is hired during the public health emergency declared on March 12, 2020, by executive order 72, by a public employer as an employee or to provide employee services to elect to not suspend his or her annuity for the duration of the declared public health emergency if the position for which the

**ASSEMBLY BILL 1038**

annuitant is hired is a critical position. Under current law, if a Wisconsin Retirement System annuitant, or a disability annuitant who has attained his or her normal retirement date, is appointed to a position with a WRS-participating employer, or provides employee services to a WRS-participating employer in which he or she is expected to work at least two-thirds of what is considered full-time employment by the Department of Employee Trust Funds, the annuity must be suspended and no annuity payment is payable until after the participant again terminates covered employment.

Also under current law, a WRS participant who has applied to receive a retirement annuity must wait at least 75 days between terminating covered employment with a WRS employer and returning to covered employment again as a participating employee. This bill reduces that period to 15 days for individuals who are hired to a critical position during the public health emergency declared on March 12, 2020, by executive order 72.

***Employees returning from a leave of absence***

Under the bill, for the purposes of group health insurance offered by the group insurance board, an employee who returns from a leave of absence and who has not resumed active duty for at least 30 consecutive calendar days on March 12, 2020, is deemed to have ended or interrupted the leave of absence on that date.

**17.****STATE GOVERNMENT*****Refunding certain general obligation debt***

This bill increases the amount of state public debt that may be contracted to refund any unpaid indebtedness used to finance tax-supported or self-amortizing facilities from \$6,785,000,000 to \$7,510,000,000.

***Suspension of deadlines and training requirements***

This bill authorizes state agencies, authorities, local governments, the legislature, and the courts to suspend, during the public health emergency declared on March 12, 2020, by executive order 72, deadlines and training requirements that they administer or enforce. The bill excludes deadlines relating to the filing or payment of taxes and deadlines relating to an election.

**18.****TAXATION*****Internal Revenue Code updates; federal tax law changes, coronavirus***

This bill makes a number of changes to conform Wisconsin's tax law to federal tax law changes enacted in March 2020 in response to the coronavirus outbreak. The bill includes the following changes:

1. Exempts from otherwise applicable penalties certain taxable year 2020 distributions from a retirement account qualified under the Internal Revenue Code, and exempts from income taxation these distributions subject to a number of conditions.

2. Creates additional deductions, for taxable year 2020, for certain individual charitable contributions, and suspends the limitations on certain individual and

**ASSEMBLY BILL 1038**

corporate charitable deductions. The suspension of limitations applies to contributions made in calendar year 2020 only, although certain amounts donated in 2020 may be carried forward to future years.

3. Clarifies that an individual's health insurance plan is still treated as a high deductible plan even if it fails to provide a deductible for telehealth and other remote care services.

4. Conforms state law to federal law regarding the treatment of paycheck protection loans to businesses and employees under the small business administration's loan guarantee program for the period of time from February 15, 2020, through June 30, 2020. A portion of the loans may be forgiven on a tax-free basis under certain conditions.

5. Provides an exclusion from income for certain student loan principal and interest payments made by an employer on behalf of an employee, subject to the same current law cap of \$5,250 in payments for qualified educational expenses made on behalf of an employee by an employer. This provision applies to payments made from March 28, 2020, through December 31, 2020.

6. Corrects a drafting error in the federal Tax Cuts and Jobs Act of 2017 to provide a 15-year recovery period for qualified improvement property.

***Authority to waive interest and penalties for general fund and transportation fund taxes***

This bill authorizes the secretary of revenue to waive, for any person who fails to remit general fund taxes or transportation fund taxes and fees by their due date, the interest and penalties that accrue during the period covered by the COVID-19 public health emergency if the due date falls within that period and the secretary determines that the person's failure is due to the effects of the COVID-19 pandemic.

***Interest on late property tax payments***

Under current law, a late installment payment of property taxes is subject to interest and penalties, with the interest accruing from February 1 of the year in which the taxes are due. Under this bill, for property taxes payable in 2020, after making a general or case-by-case finding of hardship, a municipality may provide that an installment payment due after April 1, 2020, that is received after its due date will not accrue interest or penalties if the total amount due is received on or before October 1, 2020. Interest and penalties will accrue from October 1, 2020, for any property taxes payable in 2020 that are delinquent after October 1, 2020.

***Claims for recovery of unlawful taxes and excessive assessments***

Current law allows a person to file a claim to recover the unlawful imposition of property taxes or a claim for the excessive assessment of property taxes. However, no person may file a claim for recovery of unlawful taxes or excessive assessment unless the person has paid his or her property taxes on time. The bill provides that this restriction does not apply to taxes due and payable in 2020 if paid by October 1, 2020, or by any installment date for which taxes are due after October 1, 2020.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

**ASSEMBLY BILL 1038**

This proposal may contain a health insurance mandate requiring a social and financial impact report under s. 601.423, stats.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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

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

1           **SECTION 1.** 13.101 (4) of the statutes is amended to read:

2           13.101 (4) The committee may transfer between appropriations and programs  
3 if the committee finds that unnecessary duplication of functions can be eliminated,  
4 more efficient and effective methods for performing programs will result or  
5 legislative intent will be more effectively carried out because of such transfer, if  
6 legislative intent will not be changed as the result of such transfer and the purposes  
7 for which the transfer is requested have been authorized or directed by the  
8 legislature. The authority to transfer between appropriations includes the authority  
9 to transfer between 2 fiscal years of the same biennium, between 2 appropriations  
10 of the same agency and between an appropriation of one agency and an appropriation  
11 of a different agency. No transfer between appropriations or programs may be made  
12 to offset deficiencies arising from the lack of adequate expenditure controls by a  
13 department, board, institution, commission or agency. The Except as provided in  
14 sub. (4d), the authority to transfer between appropriations shall not include the  
15 authority to transfer from sum sufficient appropriations as defined under s. 20.001  
16 (3) (d) to other types of appropriations.

17           **SECTION 2.** 13.101 (4d) of the statutes is created to read:

**ASSEMBLY BILL 1038****SECTION 2**

1           13.101 (4d) During the public health emergency declared on March 12, 2020,  
2 by executive order 72, and for a period of 90 days after termination of the emergency,  
3 the committee may transfer under sub. (4) an amount not to exceed \$75,000,000 from  
4 sum sufficient appropriations, as defined under s. 20.001 (3) (d), to be used for  
5 expenditures related to the emergency.

6           **SECTION 3.** 20.866 (2) (xm) of the statutes is amended to read:

7           20.866 (2) (xm) *Building commission; refunding tax-supported and*  
8 *self-amortizing general obligation debt.* From the capital improvement fund, a sum  
9 sufficient to refund the whole or any part of any unpaid indebtedness used to finance  
10 tax-supported or self-amortizing facilities. In addition to the amount that may be  
11 contracted under par. (xe), the state may contract public debt in an amount not to  
12 exceed ~~\$6,785,000,000~~ \$7,510,000,000 for this purpose. Such indebtedness shall be  
13 construed to include any premium and interest payable with respect thereto. Debt  
14 incurred by this paragraph shall be repaid under the appropriations providing for  
15 the retirement of public debt incurred for tax-supported and self-amortizing  
16 facilities in proportional amounts to the purposes for which the debt was refinanced.  
17 No moneys may be expended under this paragraph unless the true interest costs to  
18 the state can be reduced by the expenditure.

19           **SECTION 4.** 40.22 (1) of the statutes is amended to read:

20           40.22 (1) Except as otherwise provided in sub. (2) and s. 40.26 (6), each  
21 employee currently in the service of, and receiving earnings from, a state agency or  
22 other participating employer shall be included within the provisions of the Wisconsin  
23 retirement system as a participating employee of that state agency or participating  
24 employer.

25           **SECTION 5.** 40.22 (2m) (intro.) of the statutes is amended to read:

## ASSEMBLY BILL 1038

1           40.22 (2m) (intro.) ~~An~~ Except as otherwise provided in s. 40.26 (6), an employee  
2 who was a participating employee before July 1, 2011, who is not expected to work  
3 at least one-third of what is considered full-time employment by the department,  
4 as determined by rule, and who is not otherwise excluded under sub. (2) from  
5 becoming a participating employee shall become a participating employee if he or she  
6 is subsequently employed by the state agency or other participating employer for  
7 either of the following periods:

8           **SECTION 6.** 40.22 (2r) (intro.) of the statutes is amended to read:

9           40.22 (2r) (intro.) ~~An~~ Except as otherwise provided in s. 40.26 (6), an employee  
10 who was not a participating employee before July 1, 2011, who is not expected to work  
11 at least two-thirds of what is considered full-time employment by the department,  
12 as determined by rule, and who is not otherwise excluded under sub. (2) from  
13 becoming a participating employee shall become a participating employee if he or she  
14 is subsequently employed by the state agency or other participating employer for  
15 either of the following periods:

16           **SECTION 7.** 40.22 (3) (intro.) of the statutes is amended to read:

17           40.22 (3) (intro.) ~~A~~ Except as otherwise provided in s. 40.26 (6), a person who  
18 qualifies as a participating employee shall be included within, and shall be subject  
19 to, the Wisconsin retirement system effective on one of the following dates:

20           **SECTION 8.** 40.26 (1m) (a) of the statutes is amended to read:

21           40.26 (1m) (a) ~~If~~ Except as otherwise provided in sub. (6), if a participant  
22 receiving a retirement annuity, or a disability annuitant who has attained his or her  
23 normal retirement date, is employed in a position in covered employment in which  
24 he or she is expected to work at least two-thirds of what is considered full-time  
25 employment by the department, as determined under s. 40.22 (2r), the participant's

**ASSEMBLY BILL 1038****SECTION 8**

1 annuity shall be suspended and no annuity payment shall be payable until after the  
2 participant terminates covered employment.

3 **SECTION 9.** 40.26 (1m) (b) of the statutes is amended to read:

4 40.26 (1m) (b) If Except as otherwise provided in sub. (6), if a participant  
5 receiving a retirement annuity, or a disability annuitant who has attained his or her  
6 normal retirement date, enters into a contract to provide employee services with a  
7 participating employer and he or she is expected to work at least two-thirds of what  
8 is considered full-time employment by the department, as determined under s. 40.22  
9 (2r), the participant's annuity shall be suspended and no annuity payment shall be  
10 payable until after the participant no longer provides employee services under the  
11 contract.

12 **SECTION 10.** 40.26 (5) (intro.) of the statutes is amended to read:

13 40.26 (5) (intro.) If Except as otherwise provided in sub. (5m), if a participant  
14 applies for an annuity or lump sum payment during the period in which less than 75  
15 days have elapsed between the termination of employment with a participating  
16 employer and becoming a participating employee with any participating employer,  
17 all of the following shall apply:

18 **SECTION 11.** 40.26 (5m) of the statutes is created to read:

19 40.26 (5m) During the public health emergency declared on March 12, 2020,  
20 by executive order 72, sub. (5) does not apply if at least 15 days have elapsed between  
21 the termination of employment with a participating employer and becoming a  
22 participating employee if the position for which the participant is hired is a critical  
23 position, as determined by the secretary of health services under s. 323.19 (3).

24 **SECTION 12.** 40.26 (6) of the statutes is created to read:

**ASSEMBLY BILL 1038****SECTION 12**

1           40.26 (6) A participant who is hired during the public health emergency  
2 declared on March 12, 2020, by executive order 72, may elect to not suspend his or  
3 her retirement annuity or disability annuity under sub. (1m) for the duration of the  
4 state of emergency if all of the following conditions are met:

5           (a) At the time the participant terminates his or her employment with a  
6 participating employer, the participant does not have an agreement with any  
7 participating employer to return to employment or enter into a contract to provide  
8 employee services for the employer.

9           (b) The position for which the participant has been hired is a critical position,  
10 as determined under s. 323.19 (3).

11           **SECTION 13.** 40.51 (8) of the statutes is amended to read:

12           40.51 (8) Every health care coverage plan offered by the state under sub. (6)  
13 shall comply with ss. 631.89, 631.90, 631.93 (2), 631.95, 632.72 (2), 632.729, 632.746  
14 (1) to (8) and (10), 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853,  
15 632.855, 632.867, 632.87 (3) to (6), 632.885, 632.89, 632.895 (5m) and (8) to (17), and  
16 632.896.

17           **SECTION 14.** 40.51 (8m) of the statutes is amended to read:

18           40.51 (8m) Every health care coverage plan offered by the group insurance  
19 board under sub. (7) shall comply with ss. 631.95, 632.729, 632.746 (1) to (8) and (10),  
20 632.747, 632.748, 632.798, 632.83, 632.835, 632.85, 632.853, 632.855, 632.867,  
21 632.885, 632.89, and 632.895 (11) to (17).

22           **SECTION 15.** 49.688 (1) (c) of the statutes is renumbered 49.688 (1) (c) (intro.)  
23 and amended to read:

24           49.688 (1) (c) (intro.) "Prescription drug" means ~~a-~~ any of the following:



**ASSEMBLY BILL 1038****SECTION 15**

1           1. A prescription drug, as defined in s. 450.01 (20), that is included in the drugs  
2 specified under s. 49.46 (2) (b) 6. h. and that is manufactured by a drug manufacturer  
3 that enters into a rebate agreement in force under sub. (6).

4           **SECTION 16.** 49.688 (1) (c) 2. of the statutes is created to read:

5           49.688 (1) (c) 2. A vaccination recommended for administration to adults by the  
6 federal centers for disease control and prevention's advisory committee on  
7 immunization practices and approved for administration to adults by the  
8 department.

9           **SECTION 17.** 49.688 (10m) of the statutes is created to read:

10           49.688 (10m) (a) Notwithstanding subs. (6) and (7) (a), from the appropriation  
11 accounts under s. 20.435 (4) (bv), (j), and (pg), except as provided under sub. (7) (b),  
12 the department shall, under a schedule that is identical to that used by the  
13 department for payment of claims under the Medical Assistance program, provide  
14 to health care providers who administer vaccinations, including pharmacies and  
15 pharmacists, payments for vaccinations, as described under sub. (1) (c) 2., that are  
16 administered by health care providers to persons eligible under sub. (2) who have  
17 paid the deductible specified under sub. (3) (b) 1. or 2., or who, under sub. (3) (b) 1.,  
18 are not required to pay a deductible. The reimbursement to a health care provider  
19 for each vaccination under this subsection shall be at the rate of payment made for  
20 the identical vaccination under s. 49.46 (2) (b), plus a dispensing fee that is equal to  
21 the dispensing fee permitted to be charged for vaccinations for which coverage is  
22 provided under s. 49.46 (2) (b). The department shall devise and distribute a claim  
23 form for use by health care providers under this subsection and may limit payment  
24 under this subsection to those vaccinations for which payment claims are submitted  
25 by health care providers directly to the department. The department may apply to

**ASSEMBLY BILL 1038**

1 the program under this subsection the same utilization and cost control procedures  
2 that apply under rules promulgated by the department to medical assistance under  
3 subch. IV of ch. 49.

4 (b) The department may provide payment for a vaccination under this  
5 subsection only after deducting the amount of any payment for the vaccination  
6 available from other sources.

7 **SECTION 18.** 60.11 (2) (b) of the statutes is renumbered 60.11 (2) (b) 1.

8 **SECTION 19.** 60.11 (2) (b) 2. of the statutes is created to read:

9 60.11 (2) (b) 2. The town board or, if the town board is unable to promptly meet,  
10 the town chair may postpone the annual town meeting to a date that is not during  
11 the period beginning on the first day of the public health emergency declared on  
12 March 12, 2020, by executive order 72, and ending 60 days after the termination of  
13 that order.

14 **SECTION 20.** 66.0137 (4) of the statutes is amended to read:

15 66.0137 (4) SELF-INSURED HEALTH PLANS. If a city, including a 1st class city, or  
16 a village provides health care benefits under its home rule power, or if a town  
17 provides health care benefits, to its officers and employees on a self-insured basis,  
18 the self-insured plan shall comply with ss. 49.493 (3) (d), 631.89, 631.90, 631.93 (2),  
19 632.729, 632.746 (10) (a) 2. and (b) 2., 632.747 (3), 632.798, 632.85, 632.853, 632.855,  
20 632.867, 632.87 (4) to (6), 632.885, 632.89, 632.895 (9) to (17), 632.896, and 767.513  
21 (4).

22 **SECTION 21.** 70.47 (3) (aL) of the statutes is renumbered 70.47 (3) (aL) 1. and  
23 amended to read:

24 70.47 (3) (aL) 1. If Except as provided in subd. 2., if the assessment roll is not  
25 completed at the time of the first meeting, the board shall adjourn for the time

1 necessary to complete the roll, and shall post a written notice on the outer door of the  
2 place of meeting stating the time to which the meeting is adjourned.

3 SECTION 22. 70.47 (3) (aL) 2. of the statutes is created to read:

4 70.47 (3) (aL) 2. Regardless of whether the 2020 assessment roll is completed  
5 at the time of the 45-day period beginning on the 4th Monday of April, the board may  
6 publish a class 1 notice under ch. 985 that the board has adjourned and will proceed  
7 under sub. (2).

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8 SECTION 23. 71.01 (6) (L) 3. of the statutes is amended to read:

9 71.01 (6) (L) 3. For purposes of this paragraph, "Internal Revenue Code" does  
10 not include amendments to the federal Internal Revenue Code enacted after  
11 December 31, 2017, except that "Internal Revenue Code" includes sections 1106,  
12 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
13 116-136.

14 SECTION 24. 71.22 (4) (L) 3. of the statutes is amended to read:

15 71.22 (4) (L) 3. For purposes of this paragraph, "Internal Revenue Code" does  
16 not include amendments to the federal Internal Revenue Code enacted after  
17 December 31, 2017, except that "Internal Revenue Code" includes sections 1106,  
18 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
19 116-136.

20 SECTION 25. 71.22 (4m) (L) 3. of the statutes is amended to read:

21 71.22 (4m) (L) 3. For purposes of this paragraph, "Internal Revenue Code" does  
22 not include amendments to the federal Internal Revenue Code enacted after  
23 December 31, 2017, except that "Internal Revenue Code" includes sections 1106,  
24 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
25 116-136.

**ASSEMBLY BILL 1038****SECTION 26**

1           **SECTION 26.** 71.26 (2) (b) 12. d. of the statutes is amended to read:

2           71.26 (2) (b) 12. d. For purposes of subd. 12. a., “Internal Revenue Code” does  
3 not include amendments to the federal Internal Revenue Code enacted after  
4 December 31, 2017, except that “Internal Revenue Code” includes sections 1106,  
5 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
6 116-136.

7           **SECTION 27.** 71.34 (1g) (L) 3. of the statutes is amended to read:

8           71.34 (1g) (L) 3. For purposes of this paragraph, “Internal Revenue Code” does  
9 not include amendments to the federal Internal Revenue Code enacted after  
10 December 31, 2017, except that “Internal Revenue Code” includes sections 1106,  
11 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
12 116-136.

13           **SECTION 28.** 71.42 (2) (L) 3. of the statutes is amended to read:

14           71.42 (2) (L) 3. For purposes of this paragraph, “Internal Revenue Code” does  
15 not include amendments to the federal Internal Revenue Code enacted after  
16 December 31, 2017, except that “Internal Revenue Code” includes sections 1106,  
17 2202, 2203, 2204, 2205, 2206, 2307, 3608, 3609, 3701, and 3702 of division A of P.L.  
18 116-136.

19           **SECTION 29.** 71.98 (3) of the statutes is amended to read:

20           71.98 (3) DEPRECIATION, DEPLETION, AND AMORTIZATION. For taxable years  
21 beginning after December 31, 2013, and for purposes of computing depreciation and  
22 amortization, the Internal Revenue Code means the federal Internal Revenue Code  
23 in effect for federal purposes on January 1, 2014, except that sections 13201 (f),  
24 13203, 13204, and 13205 of P.L. 115-97 and section 2307 of division A of P.L. 116-136  
25 apply at the same time as for federal purposes. For taxable years beginning after

**ASSEMBLY BILL 1038****SECTION 29**

1 December 31, 2013, and for purposes of computing depletion, the Internal Revenue  
2 Code means the federal Internal Revenue Code in effect for federal purposes for the  
3 year in which the property is placed in service.

4 **SECTION 30.** 74.35 (5) (c) of the statutes is amended to read:

5 74.35 (5) (c) No claim may be filed or maintained under this section unless the  
6 tax for which the claim is filed, or any authorized installment payment of the tax, is  
7 timely paid under s. 74.11, 74.12 or 74.87. This paragraph does not apply to taxes  
8 due and payable in 2020 if paid by October 1, 2020, or by any installment date for  
9 which taxes are due after October 1, 2020.

10 **SECTION 31.** 74.37 (4) (b) of the statutes is amended to read:

11 74.37 (4) (b) No claim or action for an excessive assessment may be brought or  
12 maintained under this section unless the tax for which the claim is filed, or any  
13 authorized installment of the tax, is timely paid under s. 74.11 or 74.12. This  
14 paragraph does not apply to taxes due and payable in 2020 if paid by October 1, 2020,  
15 or by any installment date for which taxes are due after October 1, 2020.

16 **SECTION 32.** 100.307 of the statutes is created to read:

17 **100.307 Returns during emergency; prohibition. (1) DEFINITIONS.** In this  
18 section:

19 (a) "Food product" has the meaning given in s. 93.01 (6).

20 (b) "Personal care product" has the meaning given in s. 299.50 (1) (b).

21 **(2) CERTAIN RETURNS PROHIBITED DURING EMERGENCY.** Except as provided in sub.  
22 (3), no person who sells food products, personal care products, cleaning products, or  
23 paper products at retail may accept a return of a food product, personal care product,  
24 cleaning product, or paper product during the public health emergency declared on

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1 March 12, 2020, by executive order 72, or during the 30 days immediately after the  
2 public health emergency ends.

3 (3) EXCEPTIONS. A person who sells food products, personal care products,  
4 cleaning products, or paper products at retail may accept a return of a food product,  
5 personal care product, cleaning product, or paper product if any of the following  
6 applies:

7 (a) The product is returned no more than 7 days after purchase.

8 (b) The product is adulterated within the meaning of s. 97.02 or defective as a  
9 result of a production error or defect.

10 (4) OTHER RETURNS ALLOWED. A retailer may accept a return of a product that  
11 is not prohibited by sub. (2).

12 SECTION 33. 102.03 (6) of the statutes is created to read:

13 102.03 (6) (a) In this subsection, "first responder" means an employee of or  
14 volunteer for an employer that provides fire fighting, law enforcement, <sup>or</sup> medical or  
15 other emergency services, and who has regular, direct contact with, or is regularly  
16 in close proximity to, patients or other members of the public requiring emergency  
17 services, within the scope of the individual's work for the employer.

AA4  
2.  
AA4  
2.

18 (b) For the purposes of benefits under this chapter, where an injury to a first  
19 responder is found to be caused by COVID-19 during the public health emergency  
20 declared by the governor under s. 323.10 on March 12, 2020, by executive order 72,  
21 and ending 30 days after the termination of the order, the injury is presumed to be  
22 caused by the individual's employment.

AA4  
3.

23 (c) An injury claimed under par. (b) must be accompanied by a specific diagnosis  
24 by a physician or by a positive COVID-19 test.

and where the employee has been exposed to persons with confirmed cases of COVID-19 in the course of employment;

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1 (d) An injury claimed under par. (b) may be rebutted by specific evidence that  
2 the injury was caused by exposure to COVID-19 outside of the first responder's work  
3 for the employer.

4 **SECTION 34.** 102.565 (6) of the statutes is created to read:

5 102.565 (6) This section does not apply to an employee whose claim of injury  
6 is presumed to be caused by employment under s. 102.03 (6).

7 **SECTION 35.** 103.13 (2m) of the statutes is created to read:

8 103.13 (2m) EMPLOYEE RECORDS DURING AN EMERGENCY. Notwithstanding sub.  
9 (2), during the public health emergency declared on March 12, 2020, by executive  
10 order 72, an employer is not required to provide an employee's personnel records  
11 within 7 working days after an employee makes a request to inspect his or her  
12 personnel records, and an employer is not required to provide the inspection at a  
13 location reasonably near the employee's place of employment during normal working  
14 hours.

15 **SECTION 36.** 108.04 (2) (d) of the statutes is created to read:

16 108.04 (2) (d) If required under s. 108.07 (5) (bm), each claimant shall and each  
17 employer shall under s. 108.09 (1) or when otherwise requested by the department,  
18 indicate whether a claim for regular benefits is related to the public health  
19 emergency declared on March 12, 2020, by executive order 72. The department may  
20 specify the information required to be provided under this paragraph.

21 **SECTION 37.** 108.04 (3) of the statutes is renumbered 108.04 (3) (a) and  
22 amended to read:

23 108.04 (3) (a) ~~The Subject to par. (b),~~ the first week of a claimant's benefit year  
24 for which the claimant has timely applied and is otherwise eligible for regular  
25 benefits under this chapter is the claimant's waiting period for that benefit year.

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1           **SECTION 38.** 108.04 (3) (b) of the statutes is created to read:

2           108.04 (3) (b) Paragraph (a) does not apply with respect to benefit years that  
3 begin after March 12, 2020, and before February 7, 2021. The department shall seek  
4 the maximum amount of federal reimbursement for benefits that are, during the  
5 time period specified in this paragraph, payable for the first week of a claimant's  
6 benefit year as a result of the application of this paragraph.

7           **SECTION 39.** 108.04 (13) (d) 3. b. of the statutes is amended to read:

8           108.04 (13) (d) 3. b. If recovery of an overpayment is not permitted under s.  
9 108.22 (8) (c), restore the proper amount to the employer's account and charge that  
10 amount to the fund's balancing account unless s. 108.07 (5) (e) (am) 3. applies.

11           **SECTION 40.** 108.04 (13) (d) 4. b. of the statutes is amended to read:

12           108.04 (13) (d) 4. b. If recovery of an overpayment is not permitted under s.  
13 108.22 (8) (c), restore the proper amount to the employer's account and charge that  
14 amount in accordance with s. 108.07 (5) (am).

15           **SECTION 41.** 108.062 (1) (b) of the statutes is amended to read:

16           108.062 (1) (b) "Work-share program" means a program approved by the  
17 department under which the hours of work of employees ~~in a work unit~~ are reduced  
18 in lieu of the layoffs of 2 or more employees ~~in the work unit~~.

19           **SECTION 42.** 108.062 (2m) of the statutes is created to read:

20           108.062 (2m) APPLICATIONS; DEPARTMENT ASSISTANCE. The department shall  
21 allow employers to submit applications under this section using an online form. The  
22 department shall provide assistance to employers with submitting applications and  
23 developing work-share plans.

24           **SECTION 43.** 108.062 (3) of the statutes is amended to read:



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## SECTION 43

1           108.062 (3) APPROVAL OF PLANS. The department shall approve a plan if the plan  
2 includes all of the elements specified in sub. (2) or (20), whichever is applicable. The  
3 approval is effective for the effective period of the plan unless modified under sub.  
4 (3m).

5           **SECTION 43m.** 108.062 (3r) of the statutes is created to read:

6           108.062 (3r) APPLICABILITY OF LAWS. A work-share program shall be governed  
7 by the law that was in effect when the plan or modification was last approved under  
8 sub. (3) or (3m), until the program ends as provided in sub. (4). *INS 0044 4.*

9           **SECTION 44.** 108.062 (4) of the statutes is renumbered 108.062 (4) (a) 1. and  
10 amended to read:

11           108.062 (4) (a) 1. ~~A~~ Except as provided in subd. 2., a work-share program  
12 becomes effective on the later of the Sunday of the 2nd week beginning after approval  
13 of a work-share plan under sub. (3) or any Sunday after that day specified in the  
14 plan.

15           **(b)** A work-share program ends on the earlier of the last Sunday that precedes  
16 the end of the 6-month period beginning on the effective date of the program or any  
17 Sunday before that day specified in the plan unless the program terminates on an  
18 earlier date under sub. (5), (14), or (15).

19           **SECTION 45.** 108.062 (4) (a) 2. of the statutes is created to read:

20           108.062 (4) (a) 2. With respect to a work-share plan approved during a period  
21 described under sub. (20), the work-share program becomes effective on the later of  
22 the Sunday of or after approval of a work-share plan under sub. (3) or any Sunday  
23 after that day specified in the plan.

24           **SECTION 46.** 108.062 (15) of the statutes is amended to read:

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1           108.062 (15) INVOLUNTARY TERMINATION. If in any week there are fewer than 20  
2 employees who are included in a work-share program of any employer, the program  
3 terminates on the 2nd Sunday following the end of that week. This subsection does  
4 not apply to a work-share program to which sub. (20) applies.

5           **SECTION 47.** 108.062 (19) of the statutes is renumbered 108.062 (19) (intro.) and  
6 amended to read:

7           108.062 (19) SECRETARY MAY WAIVE COMPLIANCE. (intro.) The secretary may  
8 ~~waive compliance with any requirement under this section~~ do any of the following  
9 if the secretary determines that ~~waiver of the requirement~~ doing so is necessary to  
10 permit continued certification of this chapter for grants to this state under Title III  
11 of the federal Social Security Act, for maximum credit allowances to employers under  
12 the federal Unemployment Tax Act, or for this state to qualify for full federal  
13 financial participation in the cost of administration of this section and financing of  
14 benefits to employees participating in work-share programs under this section.:

15           **SECTION 47m.** 108.062 (19) (a) and (b) of the statutes are created to read:

16           108.062 (19) (a) Waive compliance with any requirement under this section.

17           (b) Waive the application of sub. (20), in whole or in part, to the extent necessary  
18 for any of the purposes specified in this subsection or, to the extent necessary for any  
19 of those purposes, require the continued application of any requirement under sub.  
20 (2).

21           **SECTION 48.** 108.062 (20) of the statutes is created to read:

22           108.062 (20) SUSPENSIONS OF CERTAIN PROVISIONS. Notwithstanding sub. (2),  
23 this subsection, and not sub. (2), applies to work-share plans submitted on or after  
24 the effective date of this subsection .... [LRB inserts date], and before December 31,  
25 2020, subject to sub. (19). During that period, prior to implementing a work-share

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1 program, an employer shall submit a work-share plan for the approval of the  
2 department. In its submittal, the employer shall certify that its plan is in compliance  
3 with all requirements under this section. Each plan shall:

4 (a) Specify the affected positions, and the names of the employees filling those  
5 positions on the date of submittal. The plan need not be limited to a particular work  
6 unit.

7 (b) Provide for initial coverage under the plan of at least 2 positions that are  
8 filled on the effective date of the work-share program.

9 (c) Specify the period or periods when the plan will be in effect, which may not  
10 exceed a total of 6 months in any 5-year period within the same work unit.

11 (d) Exclude participation by employees who are employed on a seasonal,  
12 temporary, or intermittent basis.

13 (e) Apply only to employees who have been engaged in employment with the  
14 employer for a period of at least 3 months on the effective date of the work-share  
15 program and who are regularly employed by the employer in that employment.

16 (f) Specify the normal average hours per week worked by each employee in the  
17 work unit and the percentage reduction in the average hours of work per week  
18 worked by that employee, exclusive of overtime hours, which shall be applied in a  
19 uniform manner and which shall be at least 10 percent of the normal hours per week  
20 of that employee but not more than whichever of the following is greater:

21 1. Sixty percent of the normal hours per week of that employee.

22 2. The maximum percent reduction of the normal hours per week of that  
23 employee that is permissible under federal law.

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1 (g) Describe the manner in which requirements for maximum federal financial  
2 participation in the plan will be implemented, including a plan for giving notice,  
3 where feasible, to participating employees of changes in work schedules.

4 (h) Provide an estimate of the number of layoffs that would occur without  
5 implementation of the plan.

6 (i) Specify the effect on any fringe benefits provided by the employer to the  
7 employees who are included in the work-share program other than fringe benefits  
8 required by law.

9 (j) Include a statement affirming that the plan is in compliance with all  
10 employer obligations under applicable federal and state laws.

11 (k) Indicate whether the plan includes employer-sponsored training to  
12 enhance job skills and acknowledge that the employees may participate in training  
13 funded under the federal Workforce Innovation and Opportunity Act, 29 USC 3101  
14 to 3361, or another federal law that enhances job skills without affecting availability  
15 for work, subject to department approval.

16 **SECTION 49.** 108.07 (5) of the statutes is renumbered 108.07 (5) (am).

17 **SECTION 50.** 108.07 (5) (bm) of the statutes is created to read:

18 108.07 (5) (bm) 1. The department shall, when processing initial claims for  
19 regular benefits, determine whether a claim or plan is related to the public health  
20 emergency declared on March 12, 2020, by executive order 72. If a claim is so related,  
21 the regular benefits for that claim shall, except as provided in subd. 2., be paid as  
22 provided in subd. 3.

23 2. a. Subdivision 1. applies only with respect to benefits payable for weeks  
24 beginning after March 12, 2020, and beginning before December 31, 2020.

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## SECTION 50

1           b. Subdivision 1. does not apply if the employer fails to timely and adequately  
2 provide any information required by the department under s. 108.04 (2) (d).

3           c. Subdivision 1. does not apply with respect to any benefits paid or reimbursed  
4 by the federal government, or any portion thereof, including the portion of any  
5 benefits reimbursed by the federal government for reimbursable employers, as  
6 defined in s. 108.155 (1) (b).

7           d. In the case of a claim for regular benefits that is a combined wage claim, as  
8 defined in s. 108.04 (13) (g) 1. a., subd. 1. applies only with respect to this state's share  
9 of benefits.

10           e. Subdivision 1. does not apply with respect to work-share benefits under s.  
11 108.062 (6).

12           f. Subdivision 1. does not apply to benefits chargeable as provided in sub. (7).

13           3. Charges for benefits to which subd. 1. applies shall, notwithstanding any  
14 other provision of this chapter, be paid or reimbursed as follows:

15           a. For employers subject to the contribution requirements of ss. 108.17 and  
16 108.18, the benefits shall be charged to the fund's balancing account.

17           b. For reimbursable employers, as defined in s. 108.155 (1) (b), the benefits  
18 shall be paid in the manner provided under par. (am) 1.

19           **SECTION 51.** 108.14 (8n) (e) of the statutes is amended to read:

20           108.14 **(8n)** (e) The department shall charge this state's share of any benefits  
21 paid under this subsection to the account of each employer by which the employee  
22 claiming benefits was employed in the applicable base period, in proportion to the  
23 total amount of wages he or she earned from each employer in the base period, except  
24 that if s. 108.04 (1) (f), (5), (7) (a), (c), (cg), (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),  
25 108.07 (3), (3r), or (5) ~~(b)~~ (am) 2., or 108.133 (3) (f) would have applied to employment

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1 by such an employer who is subject to the contribution requirements of ss. 108.17 and  
2 108.18, the department shall charge the share of benefits based on employment with  
3 that employer to the fund's balancing account, or, if s. 108.04 (1) (f) or (5) or 108.07  
4 (3) would have applied to an employer that is not subject to the contribution  
5 requirements of ss. 108.17 and 108.18, the department shall charge the share of  
6 benefits based on that employment in accordance with s. 108.07 (5) ~~(a) and (b)~~ (am)  
7 1. and 2. The department shall also charge the fund's balancing account with any  
8 other state's share of such benefits pending reimbursement by that state.

9 **SECTION 52.** 108.141 (7) (a) of the statutes is amended to read:

10 108.141 (7) (a) The department shall charge the state's share of each week of  
11 extended benefits to each employer's account in proportion to the employer's share  
12 of the total wages of the employee receiving the benefits in the employee's base  
13 period, except that if the employer is subject to the contribution requirements of ss.  
14 108.17 and 108.18 the department shall charge the share of extended benefits to  
15 which s. 108.04 (1) (f), (5), (7) (a), (c), ~~(cg)~~, (e), (L), (q), (s), or (t), (7m) or (8) (a) or (b),  
16 108.07 (3), (3r), or (5) ~~(b)~~ (am) 2., or 108.133 (3) (f) applies to the fund's balancing  
17 account.

18 **SECTION 53.** 108.16 (6m) (a) of the statutes is amended to read:

19 108.16 **(6m)** (a) The benefits thus chargeable under s. 108.04 (1) (f), (5), (5g),  
20 (7) (h), (8) (a) or (b), (13) (c) or (d) or (16) (e), 108.07 (3), (3r), (5) ~~(b)~~ (am) 2. and (bm)  
21 3. a., (5m), ~~or and~~ (6), 108.133 (3) (f), 108.14 (8n) (e), 108.141, 108.151, or 108.152 or  
22 sub. (6) (e) or (7) (a) and (b).

23 **SECTION 54.** 115.385 (1) (intro.) of the statutes is amended to read:

**ASSEMBLY BILL 1038****SECTION 54**

1           115.385 (1) (intro.) ~~Annually~~ Except as provided in sub. (6), annually by  
2 November 30, the department shall publish a school and school district  
3 accountability report that includes all of the following components:

4           **SECTION 55.** 115.385 (6) of the statutes is created to read:

5           115.385 (6) The department shall not publish a school and school district  
6 accountability report under this section in the 2020-21 school year.

7           **SECTION 56.** 115.415 (1) (b) of the statutes is amended to read:

8           115.415 (1) (b) For the evaluation of teachers and principals in the 2014-15  
9 2019-20 school year, the school board and the operator of a charter school established  
10 under s. 118.40 (2r) may not consider pupil performance on statewide assessments  
11 administered under s. 118.30 in the 2014-15 2019-20 school year and may not  
12 include pupil performance on those assessments in the evaluation score assigned to  
13 a teacher or principal under the educator effectiveness evaluation system developed  
14 under this section.

15           **SECTION 57.** 115.7915 (8m) of the statutes is created to read:

16           115.7915 (8m) PUBLIC HEALTH EXCEPTION. During the public health emergency  
17 declared on March 12, 2020, by executive order 72, if a private school participating  
18 in the program under this section is closed for at least 10 school days in a school year  
19 by a local health officer, as defined in s. 250.01 (5), or the department of health  
20 services, in the school year during which the school is closed and the following school  
21 year, the department may not withhold payment from the private school under sub.  
22 (8) (c) or bar the private school from participating in the program under sub. (8) (a)  
23 for failing to comply with a requirement under this section or a rule promulgated  
24 under this section if all of the following occur:

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## SECTION 57

1 (a) The private school submits information to the department that explains  
2 how the school closure impacted the private school's ability to comply with the  
3 requirement and any action the private school took to mitigate the consequences of  
4 not complying with the requirement.

5 (b) The department determines that the private school's failure to comply with  
6 the requirement was caused by the closure.

7 **SECTION 58.** 115.999 (1) (d) 1. of the statutes is amended to read:

8 115.999 (1) (d) 1. The school district was assigned to the lowest performance  
9 category on the 2 most recent accountability reports published ~~for the district~~ under  
10 s. 115.385 (1) ~~in the 2 most recent school years.~~

11 **SECTION 59.** 115.999 (2m) (b) 1. a. of the statutes is amended to read:

12 115.999 (2m) (b) 1. a. The unified school district was assigned to the lowest  
13 performance category on the 3 most recent accountability reports published ~~for the~~  
14 ~~district~~ under s. 115.385 (1) ~~in the 3 most recent school years.~~

15 **SECTION 60.** 118.38 (2) (am) (intro.) of the statutes is amended to read:

16 118.38 (2) (am) (intro.) In determining whether to grant the a waiver under  
17 sub. (1), the department shall consider all of the following factors and may consider  
18 additional factors:

19 **SECTION 61.** 118.38 (3) of the statutes is amended to read:

20 118.38 (3) A waiver granted under sub. (2) is effective for 4 years. The  
21 department shall renew the waiver for additional 4-year periods if the school board  
22 has evaluated the educational and financial effects of the waiver over the previous  
23 4-year period, except that the department is not required to renew a waiver if the  
24 department determines that the school district is not making adequate progress  
25 toward improving pupil academic performance.